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Presidential Documents

Title 3—

The President

Proclamation 9844 of February 15, 2019

Declaring a National Emergency Concerning the Southern Border of the United States

By the President of the United States of America

A Proclamation

The current situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency. The southern border is a major entry point for criminals, gang members, and illicit narcotics. The problem of large-scale unlawful migration through the southern border is long-standing, and despite the executive branch's exercise of existing statutory authorities, the situation has worsened in certain respects in recent years. In particular, recent years have seen sharp increases in the number of family units entering and seeking entry to the United States and an inability to provide detention space for many of these aliens while their removal proceedings are pending. If not detained, such aliens are often released into the country and are often difficult to remove from the United States because they fail to appear for hearings, do not comply with orders of removal, or are otherwise difficult to locate. In response to the directive in my April 4, 2018, memorandum and subsequent requests for support by the Secretary of Homeland Security, the Department of Defense has provided support and resources to the Department of Homeland Security at the southern border. Because of the gravity of the current emergency situation, it is necessary for the Armed Forces to provide additional support to address the crisis.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), hereby declare that a national emergency exists at the southern border of the United States, and that section 12302 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretaries of the military departments concerned, subject to the direction of the Secretary of Defense in the case of the Secretaries of the Army, Navy, and Air Force. To provide additional authority to the Department of Defense to support the Federal Government's response to the emergency at the southern border, I hereby declare that this emergency requires use of the Armed Forces and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), that the construction authority provided in section 2808 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments. I hereby direct as follows:

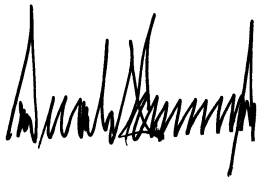
Section 1. The Secretary of Defense, or the Secretary of each relevant military department, as appropriate and consistent with applicable law, shall order as many units or members of the Ready Reserve to active duty as the Secretary concerned, in the Secretary's discretion, determines to be appropriate to assist and support the activities of the Secretary of Homeland Security at the southern border.

Sec. 2. The Secretary of Defense, the Secretary of the Interior, the Secretary of Homeland Security, and, subject to the discretion of the Secretary of Defense, the Secretaries of the military departments, shall take all appropriate

actions, consistent with applicable law, to use or support the use of the authorities herein invoked, including, if necessary, the transfer and acceptance of jurisdiction over border lands.

Sec. 3. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of February, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



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Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[Document Number AMS–SC–18–0093]

Processed Raspberry Promotion, Research, and Information Order; Termination of Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the requirement in the Processed Raspberry Promotion, Research, and Information Order (Order) that each eligible producer of raspberries for processing and eligible importer of processed raspberries pay to the National Processed Raspberry Council (Council) an assessment in the amount of one cent per pound as specified in the Order. The remaining provisions of the Order and regulations issued thereunder will terminated at a later date. This action is necessary because termination of the Order was favored by a majority of the eligible producers and eligible importers voting in a referendum conducted from September 10 through October 5, 2018.

DATES: *Effective date:* February 21, 2019.

FOR FURTHER INFORMATION CONTACT: Hakim Fobia, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244, telephone: (202) 720–9915; (202) 720–4835; facsimile: (202) 205–2800; or electronic mail: *Hakim.Fobia@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule affecting 7 CFR part 1208 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425). The Processed Raspberry Promotion, Research, and Information Order is codified at 7 CFR part 1208.

Prior documents in this proceeding: Continuance Referendum, July 25, 2018 [83 FR 35153]; Processed Raspberry Promotion, Research, and Information Order, May 8, 2012 [77 FR 26911]; and Referendum Procedures, February 8, 2010 [75 FR 6089].

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This final rule terminates Order requirements to pay an assessment as prescribed in § 1208.52 of the Order and section 517 of the 1996 Act. The 1996 Act authorizes a national processed raspberry promotion, research, and information program. In accordance with the 1996 Act, USDA developed and implemented the Order (7 CFR 1208.1–1208.520), which became effective on May 9, 2012.

Section 518(c) of the 1996 Act (7 U.S.C. 7417(c)), and section 1208.71(b) of the Order provide that the Secretary of Agriculture (Secretary) shall conduct a subsequent referendum among people subject to assessments. The Order states that subsequent referenda will be held every 7 years to determine whether producers of raspberries for processing and importers of processed raspberries favor continuance of the Order. A referendum also may be held by request of 10 percent or more of eligible voters, by request of the council established by the order, or when the Secretary deems it necessary. The Order shall continue if it is favored by a majority of producers and importers voting in the referendum, who during a representative period, have been engaged in the production or importation of processed raspberries.

In March 2018, USDA received a petition requesting a referendum from more than the required 10 percent of eligible producers of raspberries for processing and importers of processed

raspberries. As such, a referendum was held from September 10 through October 5, 2018. The representative period for establishing voter eligibility was January 1 through December 31, 2017. Persons who grew 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States during the representative period and were subject to assessment during the representative period were eligible to vote. Notice of the referendum was published in the **Federal Register** on July 25, 2018 (83 FR 35153). Termination of the Order was favored by 57 percent of the eligible producers and importers voting in the referendum.

Section 522 of the 1996 Act (7 U.S.C. 7421) and § 1208.72 of the Order provides that, if the Secretary determines that termination of the Order is favored by a majority of all the votes cast in a referendum, the Secretary shall terminate, as appropriate the collection of assessments under the Order not later than 180 days after the referendum results are announced. Further, the Secretary is required to terminate, as appropriate, activities under the Order as soon as practicable and in an orderly manner. A separate rule will be published in the future in the **Federal Register** terminating the remaining Order requirements and provisions.

In accordance with section 1208.73, the Council will recommend not more than three of its members to the Secretary to serve as trustees for purposes of liquidating the assets of the Council.

According to section 1208.74, termination of the Order and any of its provisions, including the requirements to pay assessments shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of part 1208; or

(b) Release or extinguish any violation of part 1208; or

(c) Affect or impair any rights or remedies of the United States, or the Secretary, or any other person with respect to any such violation.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS is required to examine the economic impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7.5 million.

According to the Council, it is estimated that there are 160 producers of raspberries for processing and 30 first handlers of raspberries for processing in the United States. Dividing the processed raspberry crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of $102,691,456 [1] by the number of producers yields an annual average producer revenue of $641,821. It is estimated that 75 percent of first handlers shipped under $7.5 million worth of processed raspberries.

Likewise, based on U.S. Customs data, it is estimated there are 136 importers of processed raspberries. Using 2017 Customs data, nearly all importers, or 99 percent, import less than $7.5 million worth of processed raspberries annually. Thus, the majority of domestic producers, first handlers, and importers of processed raspberries would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2017 NASS data, the value of the domestic crop was about $102 million. According to U.S. Customs data, the value of 2017 imports was about $55 million.

According to the Council, in 2017 there were 202 eligible producers and importers who paid about $1.2 million in assessments. When the Order was published in the **Federal Register** on May 8, 2012, the U.S. Department of Agriculture (USDA) stated that an anticipated $1.2 million of assessments would be collected from about 245 eligible entities. The assessment rate currently is one cent per pound of processed raspberries. This is the same rate that was set when the program first started. This rule terminates the requirement for eligible producers and importers to pay assessments.

The Order provides for reimbursements of assessments under certain conditions. Therefore, the exact economic impact of this action will take into account the amount of reimbursement of assessments producers and importers request from the Council.

This action will not impose any additional reporting or recordkeeping requirements on either large or small producers or importers of processed raspberries.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Order

It is therefore ordered, that the terms and provisions of Subpart A of part 1208 that require eligible producers and importers to pay an assessment to finance the national program for processed raspberry promotion, research, and information Order (7 CFR part 1208) are hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves each eligible producer and importer from the burden to remit assessments; (2) termination of the Order was favored by a majority of eligible producers and importers voting in the referendum; and (3) the 1996 Act and Order require that, upon such a determination by referendum, collection of assessments should terminate no later than 180 days after the results are announced.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1208 is amended as follows:

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Processed Raspberry Promotion, Research, and Information Order

■ 1. The authority citation for 7 CFR part 1208 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 2. A note is added to § 1208.52 to read as follows:

[1] Noncitrus Fruits and Nuts 2017 Summary, June 2018, USDA, National Agricultural Statistics Service, pg. 83.

§ 1208.52 Assessments.

* * * * *

Note 1 to § 1208.52: The requirement to pay assessments is terminated as of February 21, 2019.

Dated: February 14, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–02775 Filed 2–19–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 22 and 172

[Docket ID OCC–2014–0016]

RIN 1557–AD84

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R–1498]

RIN 7100 AE–22

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AE50

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AC93

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133–AE64

Loans in Areas Having Special Flood Hazards

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) are amending their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). Specifically, the final rule requires regulated lending institutions to accept policies that meet the statutory definition of ''private flood insurance'' in the Biggert-Waters Act; and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of ''private flood insurance,'' subject to certain restrictions.

DATES: This rule is effective on July 1, 2019.

FOR FURTHER INFORMATION CONTACT:

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Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst, (202) 452–2705; Vivian W. Wong, Senior Counsel, (202) 452–3667, Division of Consumer and Community Affairs; or Daniel Ericson, Senior Counsel, (202) 452–3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Simin Ho, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–6907, *sho@fdic.gov;* Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, *nchoudnury@fdic.gov* (202) 898–6526.

FCA: Paul K. Gibbs, Associate Director, Office of Regulatory Policy (703) 883–4203, TTY (703) 883–4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883–4020, TTY (703) 883–4056.

NCUA: Sarah Chung, Senior Staff Attorney, or Thomas Zells, Staff Attorney, Office of General Counsel, (703) 518–6540; or Jeff Marshall, Policy Officer, (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background

A. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act) [1] and the Flood Disaster Protection Act of 1973 (FDPA),[2] as amended, (collectively referenced herein as the Federal flood insurance statutes) govern the National Flood Insurance Program (NFIP).[3] These laws make Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in participating communities and require the purchase of flood insurance in connection with a loan made by a regulated lending institution [4] when the loan is secured by improved real estate or a mobile home located in a special flood hazard area (SFHA) [5] in which flood insurance is available under the NFIP. The laws specify the amount of insurance that must be purchased, and also require such insurance be maintained for the term of the loan. (The requirement for flood insurance, and the term and amounts of such coverage, are hereinafter described as ''the flood insurance purchase requirement.'') The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) each have issued regulations implementing these statutory requirements for the lending institutions they supervise.[6]

The Biggert-Waters Act [7] amends the Federal flood insurance statutes that the Agencies have authority to implement and enforce. Among other things, the Biggert-Waters Act: (1) Requires the Agencies to issue a rule regarding the escrow of premiums and fees for flood insurance; [8] (2) clarifies the requirement to force place insurance; [9] and (3) requires the Agencies to issue a rule to direct regulated lending institutions to accept ''private flood insurance,'' as defined by the Biggert-Waters Act, and to notify borrowers of the availability of

[1] Public Law 90–448, 82 Stat. 572 (1968).

[2] Public Law 93–234, 87 Stat. 975 (1973).

[3] These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

[4] The FDPA defines ''regulated lending institution'' to mean any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation. 42 U.S.C. 4003(a)(1).

[5] An SFHA is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year. 44 CFR 59.1. SFHAs are delineated on maps issued by FEMA for individual communities. 44 CFR part 65. A community establishes its eligibility to participate in the NFIP by adopting and enforcing flood plain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage. 44 CFR part 60.

[6] *See* 12 CFR part 22 (OCC), part 208 (Board), part 339 (FDIC), part 614 Subpart S (FCA), and part 760 (NCUA).

[7] Public Law 112–141, 126 Stat. 916 (2012).

[8] Section 100209 of the Biggert-Waters Act, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)).

[9] Section 100244 of the Biggert-Waters Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

flood insurance coverage issued by private insurers.[10]

B. Regulatory History

In October 2013, the Agencies jointly issued a proposed rule to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Act (the October 2013 Proposed Rule).[11] With respect to private flood insurance, the October 2013 Proposed Rule would have required a regulated lending institution to accept all policies meeting the statutory definition of ''private flood insurance'' in the Biggert-Waters Act (mandatory acceptance). The October 2013 Proposed Rule also included a safe harbor provision that would have allowed regulated lending institutions to rely on the expertise of State insurance regulators to determine whether a policy meets the statutory definition of ''private flood insurance'' and must be accepted by the institution. Additionally, the Agencies specifically solicited comment on whether the rule should include a provision expressly permitting regulated lending institutions to exercise their discretion to accept flood insurance provided by private insurers that does not meet the Biggert-Waters Act's definition of ''private flood insurance'' (discretionary acceptance) and what criteria the Agencies might require for such a policy.

Of the 81 written comments received on the October 2013 Proposed Rule, 51 comments addressed some aspect of private flood insurance. Most commenters requested more guidance regarding the statutory definition of ''private flood insurance.'' Most commenters also supported a provision specifically permitting the discretionary acceptance of flood insurance issued by private insurers. However, many of these commenters raised concerns about including prescriptive criteria in the discretionary acceptance provision, noting that private flood insurance policies vary based on the nature of the property and the needs and financial capability of the borrower. Commenters also supported a safe harbor provision although some commenters, including State insurance regulators, had concerns with the safe harbor as proposed.

In March 2014, the Homeowner Flood Insurance Affordability Act (HFIAA)[12] was enacted, which, among other things, amended the Biggert-Waters Act requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the flood insurance purchase requirement for certain detached structures. Accordingly, the Agencies jointly issued a new proposed rule in October 2014 to implement these HFIAA provisions.[13] Based on comments received in response to the private flood insurance provisions of the October 2013 Proposed Rule, and the statutory effective date for the escrow provisions of HFIAA, the Agencies decided to finalize the Biggert-Waters Act force-placement insurance provisions and the HFIAA escrow and detached structure provisions in July 2015[14] and to revise and re-propose the private flood insurance provisions. The Agencies re-proposed the private flood insurance rule in November 2016 (the November 2016 Proposed Rule or proposed rule),[15] and this rulemaking sets forth the final rule.[16]

II. Overview of Proposed Rule and Public Comments

The November 2016 Proposed Rule significantly revised the October 2013 Proposed Rule. In addition to provisions requiring regulated lending institutions to accept policies that meet the statutory definition of ''private flood insurance'' in the Biggert-Waters Act, the November 2016 Proposed Rule provided a compliance aid and further clarifications to assist regulated lending institutions in determining whether a policy meets the definition of ''private flood insurance.'' The November 2016 Proposed Rule also included a provision to permit regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers that do not meet the statutory definition of ''private flood insurance,'' subject to certain restrictions, and permitted the acceptance of certain flood coverage provided by ''mutual aid societies.''

The Agencies received approximately 60 comments on the proposed rule from a wide range of commenters, including: Financial institutions (including banks, credit unions, and farm credit institutions); various trade associations (including bankers' trade associations, credit union trade associations, a farm credit trade association, and home building and realtor trade associations); the insurance industry (including insurance companies, trade associations, and brokers); individuals; nonprofit organizations; a flood risk management association; a State non-profit corporation; a State-regulatory organization; a Federal agency; and a State agency.[17] The commenters addressed specific issues, such as: The regulatory definition of ''private flood insurance;'' the use of a compliance aid or regulatory safe harbor to facilitate compliance by regulated lending institutions; whether private flood insurance that does not conform to the statutory definition of ''private flood insurance'' can be accepted by regulated lending institutions; whether and what type of alternative criteria for such non-conforming private flood insurance should be required by the Agencies; and whether regulated lending institutions should be permitted to accept certain non-traditional, non-conforming flood insurance coverage, such as mutual aid society plans. These comments and the Agencies' responses to them are discussed in the summary and section-by-section analysis of the final rule that follows.

III. Summary of the Final Rule

The final rule requires regulated lending institutions to accept ''private flood insurance,'' as defined in the Biggert-Waters Act.[18] As suggested by commenters, the final rule also includes a streamlined compliance aid provision to help regulated lending institutions evaluate whether a flood insurance policy meets the definition of ''private flood insurance.'' This compliance aid allows a regulated lending institution to conclude that a policy meets the definition of ''private flood insurance'' without further review of the policy if the policy, or an endorsement to the policy, states: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

In addition, the final rule permits regulated lending institutions to choose to accept certain flood insurance policies issued by private insurers, even if the policies do not meet the statutory and regulatory definition of ''private flood insurance.'' The proposed rule included conditions for accepting these policies. In response to commenters, the Agencies removed some of these conditions from the final rule. The key

[10] Section 100239 of the Biggert-Waters Act, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

[11] 78 FR 65108 (Oct. 30, 2013).

[12] Public Law 113–89, 128 Stat. 1020 (2014).

[13] 79 FR 64518 (Oct. 30, 2014).

[14] 80 FR 43216 (July 21, 2015).

[15] 81 FR 78063 (November 7, 2016).

[16] In connection with the issuance of the final rule, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain provisions of the Federal flood insurance statutes. *See* 42 U.S.C. 4012a(b)(1). Four of the five Agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.

[17] In addition to receiving written comments, the Agencies conferred with National Association of Insurance Commissioners (NAIC) staff to obtain further information on State regulation of insurance companies.

[18] *See* 42 U.S.C. 4012a(b)(7).

conditions in the final rule are a requirement that the policy provide sufficient protection for a designated loan,[19] consistent with general safety and soundness principles, and a requirement that the regulated lending institution document its conclusion regarding the sufficiency of protection in writing. The final rule also allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by ''mutual aid societies.''

IV. Section-by-Section Analysis of the Final Rule

A. Definitions

Mutual aid society. As discussed below, the Agencies proposed, and are including in the final rule, a provision that would permit regulated lending institutions to accept, in satisfaction of the flood insurance purchase requirement, certain plans providing flood coverage issued by mutual aid societies. In connection with this provision, the Agencies proposed to add a definition of ''mutual aid society'' to their rules. Specifically, the proposal defined the term ''mutual aid society'' as an organization that meets three criteria: (1) The members must share a common religious, charitable, educational, or fraternal bond; (2) the organization must cover losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and (3) the organization must have a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

Although the Agencies received comments in support of the proposed mutual aid provisions, several commenters asserted that regulated lending institutions would find it difficult to determine whether an organization has ''a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding'' because there is no established source for that information.

The Agencies believe that a demonstrated history requirement is necessary for reasons of safety and soundness, namely, to ensure that property securing a loan extended by a regulated lending institution is adequately protected. Moreover, the Agencies believe that it will be feasible for regulated lending institutions to obtain sufficient information regarding an organization's history in covering losses to members' property caused by flooding. Regulated lending institutions may make determinations based on factors such as their experiences with mutual aid societies or examples that the mutual aid society provides of previously-covered losses. Therefore, the Agencies are retaining this prong of the definition in the final rule.

One commenter requested that the Agencies add a fourth criterion to the definition that would require an organization to demonstrate that it meets a specified exemption under State insurance or licensing rules allowing mutual aid societies to provide insurance. This commenter asserted that this additional criterion is needed to prevent the definition from including unlawful insurers. The Agencies have considered this suggestion and believe that it is not necessary. Although this final rule would permit regulated financial institutions to accept plans providing flood coverage issued by mutual aid societies, the rule would not interfere with a State's ability to regulate the provision of such coverage, including a State's ability to explicitly prohibit such coverage from being issued in a particular State. Moreover, it is the Agencies' understanding that many States may not have explicit policies, rules, or laws addressing mutual aid societies, which may result in mutual aid society coverage being inadvertently prohibited if organizations are required to demonstrate that State law affirmatively permits them to provide coverage. Therefore, the Agencies are not adding the suggested criterion and are adopting the definition as proposed.

Private flood insurance. The proposed rule included the definition of ''private flood insurance'' as specified in section 100239 of the Biggert-Waters Act, which added a new section 102(b)(7) to the FDPA.[20] Specifically, the proposed rule defined ''private flood insurance'' consistent with the statutory definition, with some clarifying edits, to mean an insurance policy that: (1) Is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance regulator of that State or jurisdiction or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the State insurance regulator of the State or jurisdiction where the property to be insured is located; (2) provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy issued under the NFIP (SFIP), including when considering deductibles, exclusions, and conditions offered by the insurer; (3) includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or a servicer acting on the institution's behalf; (4) includes information about the availability of flood insurance coverage under the NFIP; (5) includes a mortgage interest clause similar to the clause contained in an SFIP; (6) includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and (7) contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

As discussed in more detail below, the proposed rule also contained criteria that regulated lending institutions would apply to determine whether a policy's coverage is ''at least as broad as'' SFIP coverage.

The Agencies received both general and specific comments on the proposed definition of ''private flood insurance.'' Some commenters stated that, as a general matter, the proposed definition would make it more difficult for insurers, regulators, and regulated lending institutions to develop, obtain approval for, and accept flood insurance policies issued by private insurers. Others stated that the definition contained in the Biggert-Waters Act, from which the proposed definition derived, is unworkable and based on outdated FEMA guidelines. Other commenters stated that the definition should be broader or that State laws and regulations should dictate flood insurance requirements. While acknowledging commenters' concerns, the Agencies note that ''private flood insurance'' is a term defined in the Biggert-Waters Act, and the Agencies' definition is based on that statutory definition.

The Agencies received specific comments on the section of the proposed definition of ''private flood insurance'' relating to the State licensing of insurers. These commenters expressed concern that this definition could be interpreted to exclude policies issued by surplus lines insurers for noncommercial properties. In response

[19] The Agencies' rules define ''designated loan'' to mean ''a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.'' 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board), 12 CFR 339.2 (FDIC), 12 CFR 614.4925 (FCA), and 12 CFR 760.2 (NCUA).

[20] 42 U.S.C. 4012a(b)(7).

to these commenters, the Agencies confirm that policies issued by surplus lines insurers for noncommercial properties already are covered in the definition of ''private flood insurance'' as policies that are issued by insurance companies that are ''otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located.'' [21] Therefore, the Agencies do not believe it is necessary to amend the proposed regulatory text to address this issue and adopt this section of the definition of ''private flood insurance'' as proposed, with nonsubstantive changes to simplify its wording.

In addition, the Agencies received specific comments on the section of the proposed definition of ''private flood insurance'' that states that the policy must include a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage. Although one commenter supported the notification requirement, others stated that NFIP cancellation rules are not contained in an SFIP and such a notification requirement would generate confusion about whether ''private flood insurance'' policies must be broader than an SFIP. The Agencies decline to modify this section because the statutory definition states that to meet the definition of ''private of flood insurance,'' a policy must include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution.[22] Therefore, the Agencies are adopting this section of the definition as proposed.

The Agencies also received a comment on the section of the proposed definition that would require a policy to include information about the availability of flood insurance coverage under the NFIP. This commenter stated that private flood insurance policies do not contain NFIP information and such information is unnecessary because the customer already receives such information with the Notice of Special Flood Hazards. The Agencies cannot modify this section because the statutory definition states that the policy must include ''information about the availability of flood insurance coverage under the [NFIP].'' [23] Accordingly, the Agencies are adopting this part of the definition as proposed.

The Agencies received a variety of comments on the section of the proposed definition that would require a policy to contain a mortgage interest clause similar to the clause contained in an SFIP. The mortgage interest clause in an SFIP typically covers the borrower and the regulated lending institution. One commenter supported the provision, but others stated that requiring a policy to have a mortgage interest clause would be incompatible with condominium and planned community policies that provide coverage for multiple properties without explicitly naming the borrower's regulated lending institution as a loss payee. The Agencies note that this provision is part of the statutory definition and, therefore, are adopting it in the final rule consistent with the statute.

Commenters asserted that the section of the proposed definition stating that a policy must require an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy would disqualify private policies with different or no statutes of limitations. However, this provision also is part of the statutory definition,[24] and, therefore, the Agencies are retaining it in the final rule.

''*At least as broad as.*'' Many commenters on the October 2013 Proposed Rule stated that it would be difficult for regulated lending institutions to determine whether private flood insurance coverage is ''at least as broad as'' the coverage provided under the SFIP, as required by statute. In response to these comments, the Agencies proposed to clarify the meaning of this phrase. Specifically, the proposed definition of ''private flood insurance'' provided that a policy is ''at least as broad as'' the coverage provided under an SFIP if the policy, at a minimum: (1) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP; (2) covers both the mortgagor(s) and the mortgagee(s) as loss payees; (3) contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance; (4) contains deductibles no higher than the specified NFIP maximum for the same type of property, and includes similar non-applicability provisions as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the regulated lending institution; (5) provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP (any additional or different exclusions than those in an SFIP may only pertain to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP); and (6) does not contain conditions that narrow the coverage that would be provided in an SFIP.

Although some commenters supported the proposed definition of ''at least as broad as,'' others generally criticized the definition of this phrase as overly technical, too narrow, insufficiently detailed, too subjective, and unnecessarily burdensome. The Agencies also received specific comments on the proposed individual requirements defining this phrase, as discussed below.

Several commenters addressed the requirement that the private flood insurance policy cover both the mortgagor(s) and the mortgagee(s) as loss payees. Similar to comments raised about the mortgage interest clause in the definition of ''private flood insurance,'' discussed previously, several commenters noted concerns for condominium buildings and planned unit developments that use policies that provide coverage for multiple properties without explicitly naming the mortgagor or mortgagee as loss payees. After reviewing this provision, the Agencies are removing the proposed requirement here because it is unnecessary given the statutory requirement for a policy to include a mortgage interest clause similar to that contained in an SFIP, which, in general, provides for coverage of the mortgagor and mortgagee.[25]

Several commenters criticized the proposed criteria that the policy must

[21] During discussion of the Biggert-Waters Act on the Senate floor, Sen. Crapo noted that surplus lines insurers can provide coverage for residential properties and asked for clarification regarding the inclusion of surplus lines coverage in the definition of ''private flood insurance.'' In his response, Sen. Johnson stated, ''[T]he definition of 'private flood insurance' includes private flood insurance provided by a surplus lines insurer and is not intended to limit surplus lines eligibility to nonresidential properties. While the Senator is correct that surplus lines insurance is specifically mentioned in that context, overall the definition accommodates private flood insurance from insurers who are 'licensed, admitted, or otherwise approved' in the State where the property is located.'' 158 Cong. Rec. S6051 (daily ed. Sept. 10, 2012).

[22] 42 U.S.C. 4012a(b)(7)(C)(i).

[23] 42 U.S.C. 4012a(b)(7)(C)(ii).

[24] 42 U.S.C. 4012a(b)(7)(C)(iv).

[25] The SFIP currently includes the following language, in section Q, Mortgage Clause: ''Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.''

contain the coverage specified in an SFIP, including building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage. Generally, commenters supported requiring increased cost of compliance coverage, which assists mortgagors whose property is damaged by a flood to meet certain local ordinances or regulatory requirements relating to the reduction of future flood damage before the mortgagor can repair or rebuild the property. One commenter stated that overall, the provision could be interpreted as a requirement that private flood insurance policies exactly replicate the SFIP. The Agencies note that the enumerated minimum coverage requirements in this provision mirror those in an SFIP and implement the statutory requirement that private flood insurance be ''at least as broad as'' an SFIP policy. For this reason, the Agencies are adopting this provision as proposed. The Agencies also note that under this provision, as proposed and as adopted, the coverage specified in an SFIP is only a minimum requirement.

A few commenters addressed the proposed requirement that a policy must contain deductibles no higher than the specified maximum for the same type of property, and include similar non-applicability provisions, as in an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the regulated lending institution. The commenters noted that in certain cases, reasonable deductibles may not match those contained in the SFIP and that there is no equivalent coverage for comparison for policies with coverage exceeding that available under the NFIP.

In response to this concern, the Agencies clarify that for purposes of the mandatory acceptance requirement, deductibles must be ''at least as broad as'' an SFIP. For policies with coverage exceeding that available under the NFIP, the policy must only meet the deductible for the amount of coverage available in an SFIP. For example, a regulated lending institution cannot make a designated loan unless the policy is at least equal to the lesser of the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the NFIP. If a private policy for a commercial structure provided coverage of $1,000,000, in excess of the NFIP maximum of $500,000 for that type of structure, then the policy only would need to match the SFIP deductible for the first $500,000. It would be acceptable for that policy to have deductibles higher than the maximum deductible for a policy available under the NFIP for the coverage over $500,000. Therefore, the Agencies do not believe they need to modify this provision to address these commenters' concern.

However, the Agencies are making one technical change to this provision. As proposed, this provision provides that the deductibles in the policy must be compared to the SFIP deductibles for the same type of property. Because the phrase ''for the same type of property'' applies to other factors necessary to be considered ''at least as broad as,'' the Agencies have moved this phrase to the introductory text of this provision.

One commenter addressed the proposed requirement that ''additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP.'' The commenter noted that this criterion could generate confusion because ''different exclusions'' may actually have the effect of providing broader coverage. This is contrary to the Agencies' intention in specifying when coverage is ''at least as broad as'' an SFIP. Therefore, the final rule provides that regulated lending institutions need not accept policies with additional exclusions unless the exclusions have the effect of providing broader coverage to the policyholder.

Other commenters asked the Agencies to clarify whether a policy with an anti-concurrent causation clause can qualify as a policy that is ''at least as broad as an SFIP.'' These clauses provide that if a loss is caused by two perils, one of which is excluded and one of which is covered, the loss is not covered. The SFIP includes a provision regarding concurrent perils, which is effectively an anti-concurrent clause. As long as the private policy's anti-concurrent causation clause excludes losses to no greater degree than an SFIP, the policy will be ''at least as broad as'' an SFIP.

The Agencies also received many comments stating that various aspects of the definitions of ''private flood insurance'' and ''at least as broad as'' would interfere with existing State law. These comments are discussed in more detail in the mandatory acceptance requirement section that follows.

In addition to these changes, the Agencies have made nonsubstantive technical changes to the proposed definitions of ''private flood insurance'' and ''at least as broad as'' in the final rule.

''*SFIP.*'' The proposed rule defined ''SFIP'' to mean a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a regulated lending institution. The Agencies requested comment on whether this is the correct time-frame for determining what version of the SFIP a regulated lending institution should use to evaluate private policies.

One commenter on the proposed definition of ''SFIP'' expressed concern that the definition would require FEMA to give adequate advance notice of changes it makes to the Federal flood policies. Another commenter suggested that regulated lending institutions be given a reasonable period of time to update systems and change processes to accommodate material changes to the SFIP forms. Other commenters supported the proposed definition. Given the infrequency of SFIP changes, the Agencies expect that the burden of changing systems to compare against new versions of the SFIP will be minimal. Therefore, the Agencies are adopting the definition as proposed, with one technical change. Instead of defining SFIP with reference to the date a ''private policy'' is provided to a regulated lending institution, the definition references the date private flood insurance is provided to the institution.

Commenters also asked the Agencies to clarify which version of an SFIP a regulated lending institution should use for comparison with a private flood insurance policy. As stated in the Supplementary Information section of the proposed rule, when determining whether coverage is at least as broad as coverage provided under an SFIP, regulated lending institutions should compare like policies (*e.g.,* a policy covering a 1–4 family residence or a single family dwelling unit in a condominium to an SFIP dwelling policy, a policy covering all other buildings except residential condominium buildings to an SFIP general property policy, or a policy covering a residential condominium building to an SFIP Residential Condominium Building Association Policy). As noted previously, the ''at least as broad as'' provision in the final rule now includes language requiring a comparison with an SFIP for the same type of property.

B. Requirement To Purchase Flood Insurance

The Agencies' existing rules implement the statutory flood insurance purchase requirement and provide that a regulated lending institution shall not make, increase, extend, or renew any

designated loan [26] unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. Furthermore, the coverage amount must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Federal flood insurance statutes. The rules also provide that flood insurance coverage under the Federal flood insurance statutes is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

The Agencies proposed to amend this section of their rules to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Biggert-Waters Act, which requires that all regulated lending institutions accept ''private flood insurance,'' as defined in the statute, in satisfaction of the flood insurance purchase requirement if the policy meets the requirements for coverage under the flood insurance purchase requirement.[27] Meeting the ''requirements for coverage'' means that the policy must cover the building or mobile home and any personal property securing the loan in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Federal flood insurance statutes with respect to the particular type of property, whichever is less.

Although some commenters supported the proposed mandatory acceptance requirement, several commenters expressed concern that the proposed requirement would not permit regulated lending institutions to reject policies for reasons of safety and soundness. In response to these concerns, the Agencies note that the private flood insurance definition already contains criteria that address safety and soundness, such as the requirement for the insurance company to be licensed, admitted, or otherwise approved to engage in the business of insurance by a State regulator.

Other commenters asserted that regulated lending institutions would be unable to comply with the proposed mandatory acceptance requirement because they would not have timely access to the necessary documents. These commenters stated that regulated lending institutions typically only receive a declarations page and often do not receive copies of the full policies or only receive them after considerable time has passed. One commenter was unsure how the mandatory acceptance requirement would affect preexisting force placement requirements [28] that provide for the release of a force placed policy following the presentation of a declarations page by the borrower evidencing the borrower's purchase of flood insurance. Another commenter asked whether regulated lending institutions are expected to force place insurance if the full policy is not available.

The Agencies acknowledge that under existing force placement requirements, a declarations page is sufficient to evidence a borrower's purchase of flood insurance. However, a declarations page may be insufficient for a regulated lending institution to make a determination that the institution must accept a private flood insurance policy in satisfaction of the flood insurance purchase requirement if the declarations page does not provide enough information for the institution to determine that the policy meets the statutory definition of ''private flood insurance.'' In these circumstances, the regulated lending institution should request additional information about the policy to aid it in making its determination.

Several commenters requested that the Agencies provide flexibility for private flood insurance that exceeds the coverage required by the flood insurance purchase requirement. The Agencies believe that there is no need for such additional flexibility because the mandatory acceptance requirement applies only to private flood insurance provided in satisfaction of the flood insurance purchase requirement. Regulated lending institutions can exercise their discretion to accept any policy provided by a private insurer offering additional coverage beyond the flood insurance purchase requirement.

As previously mentioned, some commenters raised concerns that the mandatory acceptance requirement would conflict with existing State laws. Some of the examples commenters cited involved the restrictiveness of cancellation provisions, the 45-day cancellation notice, the one-year maximum for filing suit from date of a claim denial, and the inclusion of information on the availability of NFIP policies. The Agencies recognize that there may be conflicts between the definition of ''private flood insurance'' and State laws, and that the laws of certain States may prevent flood insurance policies issued by companies regulated by these States from meeting the definition of ''private flood insurance.'' In such cases, regulated lending institutions are not required to accept policies that comply with State laws and conflict with the definition of ''private flood insurance.'' However, as discussed in greater detail below, regulated lending institutions may still exercise their discretion to accept certain policies issued by private flood insurers, even if the policies do not conform to the definition of ''private flood insurance.''

For the reasons stated previously, and because the Biggert-Waters Act specifically mandates that regulated lending institutions accept ''private flood insurance'' as defined in the statute, the Agencies are adopting the mandatory acceptance requirement as proposed, with nonsubstantive changes to simplify the provision's wording and to add a cross-reference citation for the flood insurance purchase requirement.

C. Compliance Aid for Mandatory Acceptance

The Agencies were concerned that many regulated lending institutions, especially small institutions with a lack of technical expertise regarding flood insurance policies, would have difficulty evaluating whether a flood insurance policy meets the definition of ''private flood insurance.'' For this reason, the proposed rule included a compliance aid that provided a policy would be deemed to meet the definition of ''private flood insurance'' if the following three criteria were met: (1) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of ''private flood insurance'' by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition; (2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and (3) the policy includes the following statement within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

The Agencies received numerous comments on the proposed compliance aid. Although there was broad support for the inclusion of a compliance aid to facilitate regulated lending institutions'

[26] *Supra* footnote 19 defining ''designated loan.''

[27] 42 U.S.C. 4012a(b)(1)(B).

[28] *See* 12 CFR 22.7(b)(2) (OCC); 12 CFR 208.25(g)(2)(ii) (Board); 12 CFR 339.7(b)(2) (FDIC); 12 CFR 760.7(b)(2) (NCUA); 12 CFR 614.4945(b)(2) (FCA).

determinations, commenters largely reacted negatively to the specific proposed criteria and contended that the proposed compliance aid would not be helpful. Moreover, commenters stated that the proposed compliance aid would not cause insurance providers to alter their policies to include all of the requirements in the compliance aid simply to demonstrate that their policies meet the definition of ''private flood insurance.'' A number of commenters suggested that it would be more useful to include a safe harbor to shield regulated lending institutions.

With respect to the first criterion, commenters stated that permitting a policy to be deemed to meet the definition of ''private flood insurance,'' only if it includes or is accompanied by a written summary that, among other requirements, demonstrates how the policy meets the definition of ''private flood insurance,'' would be unworkable and unnecessarily burdensome for insurance companies and therefore prevent the compliance aid from becoming widely adopted. These commenters further indicated that insurers would be reluctant to take on the additional liability potentially associated with a summary, especially because regulated lending institutions would be required to accept a policy that meets the definition of ''private flood insurance'' even if the policy were not accompanied by a summary. Some commenters stated that a summary would provide assurance and recourse for regulated lending institutions, but others stated that the summary may lead to increased confusion about the breadth of coverage.

In response to the second criterion, commenters contended that requiring a regulated lending institution to provide written verification that the policy includes the provisions identified by the insurer in its summary would be unnecessarily burdensome for regulated lending institutions, especially those that do not immediately receive all of the documentation associated with the insurance policy in a timely manner or that do not have relevant insurance expertise. Some commenters noted that this criterion would require regulated lending institutions to duplicate the insurance company's work under the first and third criteria and still not relieve institutions of liability for their determinations. Others noted that this criterion would cause delays for borrowers. One commenter proposed only requiring regulated lending institutions to verify effective dates, coverage amounts, and names of insurers for the purpose of the compliance aid.

With respect to the third criterion, some commenters suggested that insurers would be unwilling to provide the proposed statement because it could lead to unwanted liability for the insurance company. Other commenters stated that the statement would be unnecessarily burdensome for the insurance industry because insurers would need to compare their policies to the SFIP and possibly consult with State regulators for review or approval. Another commenter stated that many private flood insurance policies already contain assurance clauses. Several commenters stated that the proposed statement would provide regulated lending institutions and policyholders with adequate recourse in cases where the coverage does not actually meet the definition of ''private flood insurance.'' Other commenters requested that the Agencies modify the mandatory acceptance requirement to permit or require regulated lending institutions to reject policies that are not accompanied by the statement.

Many commenters suggested alternative approaches to make it easier for regulated lending institutions to apply the mandatory criteria and to relieve regulated lending institutions of liability for their determinations. One commenter suggested a safe harbor based on State regulatory approval. Two other commenters requested that the Agencies provide a template or model language for a compliance aid that could be used in insurance policies. Several commenters supported a safe harbor that would permit regulated lending institutions to rely on insurer certifications. Some commenters contended that this type of safe harbor would remove burden and delays, reduce risk and uncertainty, improve consistency across the market, and promote the acceptance of private flood insurance. One commenter stated that permitting regulated lending institutions to rely on insurer certifications would align flood insurance with the larger hazard insurance market. Another commenter stated that regulated lending institutions should be permitted to rely on any type of assurance that is legally enforceable against the insurer, rather than only allowing the statement as a provision of, or endorsement to, a private flood insurance policy.

In response to commenter concerns, the Agencies have simplified the compliance aid in the final rule by removing the first two criteria—the insurer's written summary demonstrating how the policy meets the definition of ''private flood insurance'' and the regulated lending institution's written verification of the accuracy of this summary. Furthermore, the Agencies have revised the third proposed criterion to clarify that a regulated lending institution may determine that a policy meets the definition of ''private flood insurance'' without further review of the policy if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.'' To clarify, if a policy includes this statement, the regulated lending institution may rely on the statement and would not need to review the policy to determine whether it meets the definition of ''private flood insurance.'' However, the institution could choose not to rely on this statement and instead make its own determination.

The Agencies do not generally regulate insurers and cannot require an insurance policy to include this compliance aid statement. However, if insurers choose to include this statement in their policies, it will facilitate the ability of regulated lending institutions, as well as consumers, to recognize policies that meet the definition of ''private flood insurance'' and promote the consistent acceptance of policies that meet this definition across the market. In this way, the compliance aid is intended to leverage the expertise of insurers to assist regulated lending institutions. Additionally, a policy that includes this statement may provide policyholders and regulated lending institutions with recourse against insurance companies that fail to abide by the terms included in the definition of ''private flood insurance,'' consistent with relevant State law. The Agencies note, however, that this provision does not relieve a regulated lending institution of the requirement to accept a policy that both meets the definition of ''private flood insurance'' and fulfills the flood insurance coverage requirement, even if the policy does not include the statement. In other words, this provision does not permit regulated lending institutions to reject policies solely because they are not accompanied by the statement.

D. Discretionary Acceptance

As noted in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, although section 102(b)(1)(B) of the FDPA [29] (as added by section 100239(a)(1) of the Biggert-Waters Act) requires a regulated lending institution

[29] 42 U.S.C. 4012a(b)(1)(B).

to accept ''private flood insurance,'' as that term is defined by statute, in satisfaction of the flood insurance purchase requirement, the Biggert-Waters Act is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition of ''private flood insurance.'' Furthermore, the Agencies observe that the Biggert-Waters Act did not disturb the ''flood insurance'' purchase requirement in section 102(b) of the FDPA and that the term ''flood insurance'' in the FDPA remains undefined after the passage of the Biggert-Waters Act. Accordingly, consistent with the Congressional intent of the Biggert-Waters Act to stimulate the private flood insurance market,[30] the Agencies are construing the term ''flood insurance'' in the flood insurance purchase requirement in section 102(b) of the FDPA to continue to permit regulated lending institutions to exercise their discretion to accept certain policies issued by private insurers that do not contain all of the criteria in the statutory definition of ''private flood insurance.''

To this end, the proposed rule provided that regulated lending institutions could accept, on a discretionary basis, a flood insurance policy issued by a private insurer if the policy meets the amount and term requirements specified in the flood insurance purchase requirement, and: (1) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located; (2) covers both the mortgagor and mortgagee as loss payees; (3) provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and (4) is either ''at least as broad'' as the coverage provided under an SFIP or provides coverage that is ''similar'' to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer.[31]

The proposed rule stated that to determine whether the coverage ''is similar'' to coverage provided under an SFIP, a regulated lending institution would have to: (1) Compare the private policy with an SFIP to determine the differences between the private policy and an SFIP; (2) reasonably determine that the private policy provides sufficient protection of the loan secured by the property located in an SFHA; and (3) document its findings.

The Agencies received numerous comments on this provision. Although a few commenters were critical of allowing the discretionary acceptance of private flood insurance, the majority of commenters expressly supported having some type of discretionary acceptance provision in the regulation. One commenter critical of this provision stated that private flood insurance that does not meet the statutory minimum standards is likely to lead to abuse of homeowners, and that to protect consumers, the Agencies should eliminate the discretionary acceptance of private polices that do not meet the minimum statutory requirements. Another commenter stated that permitting discretionary acceptance would leave room for errors and increased risks of liability.

In response to these concerns, the Agencies note the important role that State insurance laws and regulators play regarding the oversight of insurance activities in each State. This role is acknowledged in the discretionary acceptance provision, which provides that a regulated lending institution may only accept a flood insurance policy issued by a private insurer, including a policy for residential property issued by a surplus lines insurer, that is licensed, admitted, or otherwise approved to engage in the business of insurance by a State insurance regulator. In the case of a policy insuring nonresidential commercial property issued by a surplus lines insurer, the insurer must be recognized, or not disapproved, by a State insurance regulator.

A third commenter disagreed with the interpretation in the proposed rule that the statute is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition of ''private flood insurance'' in the Biggert-Waters Act. However, as discussed previously, section 100239 of the Biggert-Waters Act, which requires the acceptance of policies that meet the definition of ''private flood insurance,'' did not disturb the ''flood insurance'' purchase requirement in section 102(b) of the FDPA. Furthermore, the term ''flood insurance'' as used in section 102(b) of the FDPA remains undefined after the passage of the Biggert-Waters Act. Therefore, the Agencies find that the statute may be interpreted, consistent with the Congressional intent of the Biggert-Waters Act, to permit regulated lending institutions to accept certain flood insurance policies issued by private insurers that may not contain all of the criteria in the statutory definition of ''private flood insurance.''

Those commenters in favor of this provision stated that discretionary acceptance is consistent with Congressional intent, and that current law and regulations permit regulated lending institutions to accept private flood insurance. However, most of these commenters criticized the criteria for discretionary acceptance in the proposed rule as overly burdensome and restrictive.

The Agencies received many general comments indicating that the proposed criteria would not provide regulated lending institutions with the flexibility or certainty needed to encourage the acceptance of flood insurance policies issued by private insurers. Two of these comments stated that the proposed discretionary acceptance criteria were too similar to the mandatory acceptance criteria and would prevent the development of an alternative private flood insurance market. One commenter noted that the proposed criteria would result in the rejection of many private policies that are widely accepted by regulated lending institutions today.

Commenters also addressed the difficulty for regulated lending institutions in applying the criteria. Some commenters noted that the analysis required by the proposed provision would be overly burdensome for regulated lending institutions and that institutions would struggle to apply all of the criteria because they do not have the insurance expertise required for the necessary determinations. One commenter stated that the criteria were insufficiently detailed, which would result in inconsistent application of the rule. Some commenters asserted that

[30] The Biggert-Waters Act's reforms were designed to improve the NFIP's financial integrity and stability as well as to ''increase the role of private markets in the management of flood insurance risk.'' H. Rep. No. 112–102, at 1 (2011); *see also* 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

[31] The Agencies included this proposed provision pursuant to their authority under the FDPA to issue regulations directing regulated lending institutions not to make, increase, extend, or renew any loan secured by property located in an SFHA unless the property is covered by ''flood insurance.'' *See* 42 U.S.C. 4012a(b).

regulated lending institutions would be unwilling to perform the analysis required by the proposed provision due to the potential liability associated with discretionary acceptance. These commenters maintained that lenders would be concerned that they would be held liable if they approve a private flood policy later found not to have met the definition of ''private flood insurance.'' Commenters also stated that these criteria would be difficult for regulated lending institutions to apply, and therefore would create delays in mortgage loan closings.

Two commenters suggested adopting the ''mutual aid society'' criteria for all discretionary acceptance, which would involve applying a standard based on whether a policy provides sufficient protection of the loan consistent with general safety and soundness principles. Other commenters advocated for leaving the discretion to accept private policies with the regulated lending institution. Several commenters maintained that discretionary acceptance should rely on the State insurance regulatory system.

Another commenter requested the Agencies to make clear that the requirements in the Agencies' private flood insurance rule are in addition to requirements related to private flood insurance imposed by secondary market investors (such as Fannie Mae and Freddie Mac) that apply if the mortgage loan is sold to these investors.

With respect to specific aspects of the provision, some commenters noted that the cancellation requirement would not conform to State insurance laws. Two commenters noted that State laws generally provide for the circumstances under which cancellation of a policy is permitted, but they may not require a policy to be cancelled if such circumstances occur, as provided for in the proposed rule. One commenter stated that private policies are unlikely to conform to SFIP time frames and supported having ''reasonable'' cancellation notices. Two commenters supported having a mandatory 45-day notice of cancellation to protect consumers.

Many commenters were opposed to a requirement that policies be ''at least as broad as'' an SFIP for the purposes of discretionary acceptance and raised similar issues to those raised about this standard in the mandatory acceptance requirement, described previously. Several commenters requested further clarification of the ''similar'' standard, especially regarding deductibles that do not align with the SFIP. One commenter supported replacing ''similar'' with ''comparable'' to prevent a rigid feature-by-feature approach, while another commenter stated that regulated lending institutions only should be permitted to accept ''at least as broad as'' policies because ''similar'' policies would endanger consumers. Another commenter suggested that instead of the ''similar'' standard, regulated lending institutions should be permitted to accept policies that provide sufficient protection of the loan consistent with general safety and soundness principles, noting that this standard would reduce ambiguity, complexity, and inconsistent application of the discretionary standard and that institutions already have processes to assess the safety and soundness of insurance policies. Another commenter stated that a private policy may offer equal or better overall protection even though it has provisions that are not entirely equivalent to those of an SFIP. One commenter suggested allowing consumers to determine the amount and extent of personal property coverage, rather than requiring the policy to match the coverage specified in an SFIP.

Several commenters noted that the proposal's requirement that regulated lending institutions compare a private policy to an SFIP to determine the differences between the two policies would be burdensome for institutions. One commenter specifically stated that this provision would require an unnecessarily detailed comparison with the SFIP and that regulated lending institutions instead should be permitted to accept (without conducting further analysis) any policy that provides sufficient protection of the loan, meets the other discretionary acceptance criteria, and has similar deductibles, exclusions, and conditions. Another commenter asserted that this requirement is redundant given the requirement that regulated lending institutions evaluate how a private policy's coverage compares to an SFIP.

Several commenters also requested the Agencies to clarify the phrase ''sufficient protection of the loan.'' One commenter recommended focusing on safety and soundness similar to the standard for the proposed mutual aid societies provision. Another commenter suggested that current due diligence practices would be sufficient to meet this standard. One commenter stated that ''sufficient protection of the loan'' is adequately clear.

Some commenters opposed the requirement that regulated lending institutions document both their findings relating to the comparison of the policy to an SFIP, and the determination that the policy provides sufficient protection of the loan. One commenter stated that regulated lending institutions will avoid accepting private policies because they will be unwilling to undergo the work necessary to document decisions. Another commenter supported allowing regulated lending institutions to use existing practices and a basic checklist instead of the more burdensome process required by the proposal.

Several commenters stated that regulated lending institutions should have the discretion to accept private flood insurance for residential properties, in addition to nonresidential properties, issued by surplus lines insurers. Several of these commenters noted that State insurance regulators impose requirements on surplus lines insurers and that surplus lines insurance constitutes a substantial portion of the private flood insurance market.

Several commenters expressed support for a separate approach under discretionary acceptance for nonresidential flood insurance policies. These commenters noted that owners of such properties are often more sophisticated than owners of residential properties. They also noted that private commercial policies are frequently very different from SFIPs in that they cover multiple perils, have higher deductibles, and may cover multiple properties located in different States, and therefore, would not meet the discretionary acceptance criteria. One commenter stated that the rule would impose unnecessary burdens on nonresidential and commercial property owners and that regulated lending institutions should have more discretion to accept flood insurance policies related to commercial properties. Some commenters also stated that regulated lending institutions do not have the expertise to conduct the review of complex commercial and multifamily policies necessary to apply the criteria. One commenter advocated for allowing regulated lending institutions to accept a nonresidential policy based on a determination that the policy provides sufficient protection of the loan consistent with safety and soundness.

As with the proposed definition of ''private flood insurance,'' commenters also raised concerns with respect to the application of the proposed discretionary criteria to condominium mortgage loans or mixed-use community associations. Some commenters specifically requested an exception for policies covering condominiums from the proposed requirement that the policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees because regulated lending institutions are often

not listed as loss payees in policies that cover loans for individual condominium units. These commenters stated that a regulated lending institution would not be permitted to accept a policy issued to a homeowners' association for a condominium building or planned unit development in satisfaction of the flood insurance purchase requirement because policies, such as a Residential Condominium Building Association Policy (RCBAP), are purchased by homeowners' associations for the benefit of the association and its unit owners, and typically do not include as beneficiary each regulated lending institution that provides mortgage loans to individual unit owners.

Several commenters requested a compliance aid, as provided for the proposed mandatory acceptance requirement, to assist regulated lending institutions in performing the discretionary acceptance analysis. One commenter suggested that a compliance aid could take the form of a model disclosure form.

After reviewing the comment letters, the Agencies have concluded that the final rule should include a discretionary acceptance provision, but that the provision should be less burdensome and restrictive than that included in the proposed rule, and more closely reflect the current policy of the Agencies with respect to both private flood insurance and hazard insurance. Therefore, the discretionary acceptance provision in the final rule no longer includes some of the proposed criteria, including the requirement that a policy include a specific cancellation clause, and the requirement that coverage in a flood insurance policy issued by a private insurer be ''at least as broad as'' or ''similar to an SFIP.'' By eliminating the cancellation provision and the ''at least as broad as'' and ''similar to an SFIP'' criteria, the final rule addresses commenters' concerns that the proposed criteria would be difficult to apply to commercial policies. Thus, the Agencies have concluded that a separate provision specifically applicable to commercial policies is not necessary. Furthermore, the Agencies believe that the simplification of the discretionary acceptance provision negates the need for a compliance aid provision for discretionary acceptance as some commenters advocated.

The Agencies also have modified the mortgage interest clause provision to address commenters' concerns related to condominium properties. The final rule now provides that to be accepted under the discretionary acceptance provision, the policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association or other applicable group as a common expense. This exception is identical to the exception provided for the requirement to escrow flood premiums currently contained in the Agencies' flood insurance rules.[32]

Finally, the Agencies have made a number of technical amendments to the discretionary acceptance provision in the final rule. First, the proposed rule provided that the policy must meet the ''amount and term requirements'' of the flood insurance purchase requirement. As indicated previously, these requirements provide that the property securing a designated loan must be covered by flood insurance for the term of the loan and that the amount of insurance coverage must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Federal flood insurance statutes. However, the requirement that the property be covered for the term of the loan applies to the regulated lending institution, and is not a provision that must be included in the flood insurance policy. Therefore, the final rule removes the reference to the term requirement. The Agencies also have moved the amount requirement from the introductory text to a separate prong of the provision to more clearly delineate it as a criterion of acceptance.

Second, the agencies have replaced the phrase ''loan secured by the property located in a special flood hazard area'' each time it appears with the more accurate defined term ''designated loan.'' Third, the Agencies have added ''jurisdiction'' each time ''State'' is referenced to correct inconsistencies in the proposed rule. Finally, the Agencies have made nonsubstantive changes to simplify wording.

Accordingly, the final rule permits regulated lending institutions to accept flood insurance policies issued by private insurers that do not meet the statutory and regulatory definition of ''private flood insurance'' if four criteria are met.[33]

First, the policy must provide coverage in the amount required by the flood insurance purchase requirement.

Second, the policy must be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located. As indicated in the proposed rule, this criterion is included in the definition of ''private flood insurance'' in the Biggert-Waters Act, and the Agencies find that it is appropriate to include it as a criterion for discretionary acceptance in the final rule as well. As noted previously in the discussion of mandatory acceptance, the Agencies believe that surplus lines insurers for noncommercial properties are covered as insurance companies that are ''otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located.''

Third, the policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense.

Fourth, the policy must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion regarding sufficiency of the protection of the loan in writing.

Basing the discretionary acceptance provision on loan protection appropriately focuses the ability of a regulated lending institution to accept a flood insurance policy issued by a private insurer on a key purpose of the Agencies' flood insurance rules. It also simplifies this provision, thereby facilitating the ability of regulated lending institutions, especially community financial institutions, to accept flood insurance policies issued by private insurers that do not satisfy the definition of ''private flood

[32] 12 CFR 22.5(a)(2)(iii) (OCC), 12 CFR 208.25(e)(1)(ii)(C) (Board), 12 CFR 339.5(a)(2)(iii) (FDIC), 12 CFR 614.4935(a)(2)(iii) (FCA), and 12 CFR 760.5(a)(2)(iii) (NCUA).

[33] The Agencies note that regulated lending institutions intending to sell mortgages into the secondary market also should review the requirements of such secondary market investors regarding acceptable private flood insurance.

insurance'' in the Biggert-Waters Act. Furthermore, the addition of a safety and soundness criterion makes the final rule's standard for discretionary acceptance similar to the standard included in both the proposed and final ''mutual aid society'' provision, and reflects suggestions made by public commenters.

The Agencies note that some factors, among others, that a regulated lending institution could consider in determining whether a flood insurance policy provides sufficient protection of a loan include: Whether the flood insurance policy's deductibles are reasonable based on the borrower's financial condition; whether the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary; whether the terms and conditions of the flood insurance policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral; whether the flood insurance policy complies with applicable State insurance laws; and whether the private insurance company has the financial solvency, strength, and ability to satisfy claims.

E. Mutual Aid Societies

The proposed rule permitted regulated lending institutions to accept certain flood coverage provided by mutual aid societies, which by their nature do not meet all of the requirements for discretionary acceptance in the proposed rule. As indicated previously, the final rule defines ''mutual aid society'' as an organization: (1) Whose members share a common religious, charitable, educational, or fraternal bond; (2) that covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and (3) that has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding. Under the proposed rule, a regulated lending institution could accept a private policy issued by a ''mutual aid society'' in satisfaction of the flood insurance purchase requirement provided four criteria are met: (1) The institution's primary supervisory agency has determined that such types of policies qualify as flood insurance for purposes of the Federal flood insurance statutes; (2) the policy meets the amount of coverage for losses and term requirements specified in the flood insurance purchase requirement; (3) the policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and (4) the regulated lending institution has determined that the policy provides sufficient protection of the loan secured by the property located in an SFHA. The proposed rule required that in meeting this last criterion, the institution would need to verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition; consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and document its conclusions. The Agencies included this mutual aid societies provision in the proposal in response to several commenters on the October 2013 Proposed Rule that supported adding provisions permitting regulated lending institutions to accept certain non-traditional coverage, such as certain Amish Aid Plans.

Most commenters were generally supportive of this mutual aid societies provision. One commenter noted that having the ability to accept coverage issued by mutual aid societies would better meet the needs of certain communities and the regulated lending institutions that serve them by keeping down costs and respecting the borrower's religious or other beliefs. Another commenter noted that the Agencies' proposed provision for mutual aid societies contained requirements that more closely reflect the manner in which regulated lending institutions actually evaluate private policies today. One commenter in particular noted that the provision for mutual aid societies would be very useful for Farm Credit System institutions.

A few commenters questioned the scope of the mutual aid societies provision. One commenter recommended that loans secured by commercial and multifamily properties should be exempted from a provision that permits the acceptance of coverage provided by mutual aid societies because mutual aid societies would be unable to repair large commercial and multifamily buildings.

The Agencies believe there is no need to limit the mutual aid societies provision in this fashion as the final rule does not require regulated lending institutions to accept coverage issued by mutual aid societies. The mutual aid societies provision only makes it possible for regulated lending institutions to exercise their discretion to accept coverage issued by mutual aid societies in satisfaction of the flood insurance purchase requirement, provided the coverage meets the criteria adopted by the Agencies. Furthermore, such coverage only can be accepted if the institution determines that the coverage provides sufficient protection of the loan consistent with general safety and soundness principles.

A few commenters encouraged the Agencies to expand the mutual aid societies provision to include other variations of traditional private flood insurance, including self-insurance and captive insurance companies, which employ risk shifting and distribution mechanisms or otherwise mitigate risks by partnering with unrelated insurance companies. The Agencies note that other forms of insurance, including captive insurance, self-insurance, and other types of alternative insurance policies, are permissible if they meet the requirements of discretionary acceptance and otherwise comply with applicable laws. Therefore, the Agencies decline to expand the mutual aid societies provision in this manner.

One commenter stated that the proposed rule did not address how to comply with the escrow requirement for mutual aid society agreements. The Agencies note that the escrow requirement only applies if the borrower is paying a premium for the flood coverage. If there is no premium collected for flood coverage provided by mutual aid societies, the escrow requirement would not apply.

The Agencies also received comments on the specific criteria for accepting mutual aid society coverage included in the proposed rule. One commenter requested clarification with respect to the first criterion, which required the regulated lending institution's primary supervisory agency to have determined that mutual aid society policies qualify as flood insurance. This commenter requested that the Agencies provide clarifying guidance as to how the Agencies will determine that policies issued by mutual aid societies will be acceptable. This commenter also suggested that the Agencies provide an approved list of acceptable mutual aid societies. As noted in the proposed rule, the OCC and FCA will conduct their own evaluations of mutual aid societies using the criteria that regulated lending institutions are expected to consider under 12 CFR 22.3(c)(4) or 12 CFR 614.4930(c)(4), respectively. Based on their current practices regarding non-traditional flood insurance, the Board, FDIC, and NCUA expect that cases in which they approve policies issued by mutual aid societies will be rare and limited.

Another commenter criticized the proposed rule for permitting the Agencies to adopt different approaches to accepting mutual aid society coverage. Specifically, this commenter opined that mutual aid society coverage should be treated similarly by each Agency, and that inconsistent acceptance will create unnecessary confusion and barriers for borrowers who may already be limited in their banking options due to the rural location of many communities, and who would be further limited if only certain banks are able to accept mutual aid society policies. However, the Agencies believe that this provision maintains the status quo for how the Agencies currently regulate their institutions and, therefore, should not create additional difficulties for borrowers or regulated lending institutions.[34] The Agencies, therefore, adopt this first criterion as proposed, with technical changes. The Agencies have replaced the word ''policy'' with ''plan'' in this criterion, as well as throughout the mutual aid societies provision, to more accurately describe the type of agreement issued by mutual aid societies. The Agencies also have removed the superfluous phrase ''types of'' in this criterion.

One commenter requested that the Agencies clarify their expectations for the requirements in the mutual aid societies provision, particularly with respect to ''the amount of coverage for losses and term requirements'' and identification of ''loss payees,'' as included in the second and third criteria, respectively. This commenter maintained that strict compliance with these expectations would prohibit a regulated lending institution from offering a mortgage secured by property located in an SFHA to a member of a mutual aid society because the written agreements provided by mutual aid societies do not necessarily include such specific details, do not state the insurable value of a property, and do not name the regulated lending institution as a loss payee. Instead, this commenter continued, these agreements are simply assurances by the community to rebuild a structure in the event that it is damaged or destroyed by a flood.

The Agencies understand that coverage provided by mutual aid societies may not contain all of the same information included in private flood insurance policies issued by regulated insurance companies. However, mutual aid society plans reviewed by the Agencies to date have contained clauses that name the regulated lending institution and the borrower as loss payees and have stated the insurable amount. Therefore, the Agencies are adopting the second and third criteria as proposed, with one technical change to the second criterion. The Agencies have removed the reference to term requirements, because this reference, as noted in the discretionary acceptance discussion, is the separate responsibility of the lender, and not a provision that must be included in the policy. Instead, as with the discretionary acceptance provision, the final rule provides that the mutual aid society plan must provide coverage in the amount required by the flood insurance purchase requirement, *i.e.,* the amount of coverage must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the Federal flood insurance statutes.

As indicated previously, the fourth criterion in the proposed rule provided that, to accept flood coverage from a mutual aid society, a regulated lending institution would need to determine that the coverage provides sufficient protection of the loan secured by the property located in an SFHA. In meeting this criterion, the regulated lending institution would need to: (1) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition; (2) consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and (3) document its conclusions.

Several commenters stated that the ''demonstrated record of covering losses'' provision in this criterion would create a major impediment to accepting mutual aid society policies because regulated lending institutions would struggle to determine and document the policy provider's demonstrated record of covering losses. As previously explained in the discussion of the analogous term ''demonstrated history'' in the definition of ''mutual aid society,'' the Agencies view this criterion as necessary for preventing abuse and believe regulated lending institutions will be able to obtain the information they need to document their determinations.

However, after further review, the Agencies are simplifying and streamlining this criterion in the final rule. Because the definition of ''mutual aid society'' already requires that the entity ''has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding,'' the proposed requirement that the regulated lending institution consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses, is duplicative and unnecessary. Therefore, the Agencies have removed this ''ability to satisfy claims'' language, and have included a specific cross-reference to the definition in the introductory text of this provision. The Agencies also have removed the reference to deductibles in this criterion so that it is similar to the language included in the revised discretionary acceptance provision, which does not specifically list factors that a regulated lending institution could consider when determining whether a private insurance policy is consistent with safety and soundness. However, as previously indicated in the discretionary acceptance provision discussion, regulated lending institutions can still consider the reasonableness of deductibles when determining whether the mutual aid society coverage provides sufficient protection of a loan.

Accordingly, the final rule provides that a regulated lending institution may accept a plan issued by a mutual aid society in satisfaction of the flood insurance purchase requirement provided that the following four criteria are met:

First, the regulated lending institution's primary Federal supervisory agency has determined that such plans qualify as flood insurance for purposes of this Act;

Second, the plan must provide coverage in the amount required by the flood insurance purchase requirement;

Third, the plan must cover both the mortgagor(s) and the mortgagee(s) as loss payees; and

Fourth, the plan must provide sufficient protection of the designated

[34] The OCC notes that it currently permits national banks and Federal savings associations to accept mutual aid society plans, such as plans issued by the Amish, in satisfaction of the flood insurance purchase requirement. The FCA also permits its System institutions to accept this coverage. Such plans are written agreements issued by members of a community who share a common religious bond and have a demonstrated history of covering losses to members' property caused by flooding in accordance with this common bond, either by paying to cover the cost of damaged structures or by repairing or rebuilding the structures. Accordingly, the OCC and FCA believe that such plans provide sufficient protection of a loan secured by the property, protect the institution as well as the borrower, and are issued by an organization that meets the definition of ''mutual aid society'' included in the final rule. Therefore, the final rule maintains the status quo by continuing to allow national banks, Federal savings associations, and Farm Credit System institutions to accept flood coverage issued by mutual aid societies, such as Amish Aid Plans.

loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion regarding sufficiency of the protection of the loan in writing.

F. Effective Date

The Agencies received comments regarding the amount of time regulated lending institutions would need to implement a final rule on the private flood insurance provisions of the Biggert-Waters Act. Some commenters requested that the Agencies provide at least one year to implement the final rule. One commenter stated that the Agencies should provide at least 180 days from the time the final rule is published in the **Federal Register** to implement the rule.

The Agencies are adopting an effective date of July 1, 2019. The Agencies believe this date affords regulated lending institutions sufficient time to make necessary changes to their policies and procedures as well as operating systems, and to train staff on such changes to ensure compliance with the final rule, without unnecessarily delaying the implementation of the rule. Moreover, this date complies with requirements in the Administrative Procedure Act (APA) and section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), as discussed in the Regulatory Analysis section below regarding the Effective Date. In addition, the Agencies note that section 302(b)(2) of the RCDRIA provides that a person may comply with the regulation before the effective date of the regulation.[35] Therefore, those regulated lending institutions that are able to and would like to comply with the final rule prior to July 1, 2019, may do so. The Agencies note that until July 1, 2019, regulated lending institutions may continue to accept flood insurance policies issued by private insurers and coverage provided by mutual aid societies as currently permitted by each Agency.

V. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities.[36] Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises 1,246 banks (national banks, Federal savings associations, and branches or agencies of foreign banks). The OCC finds that 1,094 OCC-supervised banks may be affected by the rule,[37] of which approximately 774 are small entities.[38] Thus, the OCC assumes the rule impacts a substantial number of small banks.

Because a limited number of borrowers are required to have flood insurance, part of the OCC cost estimate is based on the reported number of flood insurance policies in place for designated loans in July 2018, which is 3,226,416.[39] Assuming that no more than 10 percent[40] of these policies (per year) could be issued by private insurance companies going forward, the OCC's estimated compliance cost related to the acceptance of private flood insurance policies is approximately $40.31 million.[41]

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank is approximately $12,900 per year,[42] which is a combination of per policy costs ($10,544)[43] and costs associated with modifying existing policies and procedures ($2,340).[44] Using this cost estimate, the OCC believes the final rule will have a significant economic impact on two small banks, which is not a substantial number. Therefore, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a regulatory flexibility analysis is not required.

Board: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The Board is adopting revisions to Regulation H to implement the private flood insurance provisions of the Biggert-Waters Act. Consistent with the Biggert-Waters Act, the final rule would require regulated lending institutions to accept any private insurance policy that meets the Biggert-Waters Act's definition of ''private flood insurance'' in satisfaction of the flood insurance purchase requirement. The final rule would also include a compliance aid that would permit a regulated lending institution to conclude that a policy meets the Biggert-Waters Act definition of ''private flood insurance'' without further review of the policy if the policy, or an endorsement to the policy, states: ''This policy meets the definition of private flood insurance contained in 42 U.S.C.

[35] 12 U.S.C. 4802(b)(2).

[36] *See* 5 U.S.C. 601 *et seq.*

[37] To estimate the number of banks that may be affected by the final rule the OCC determined the number of banks that (a) self-identify by reporting mortgage servicing assets, reporting loans secured by real estate, or as originating 1–4 family residential mortgage loans on a Call Report submitted for any quarter in calendar year 2017 or one of the first three quarters of 2018 or (b) are identified by OCC examiners as originating residential mortgage loans or as Home Mortgage Disclosure Act (HMDA) filers.

[38] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining whether to classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[39] The reported numbers are found at Policy & Claim Statistics for Flood Insurance. The OCC's cost estimate may be overstated because the estimate does not exclude loans serviced by institutions for which another agency is the primary Federal regulator.

[40] The RFA discussion in the proposed rule also specified a 10 percent increase in private flood insurance policies as a result of this rulemaking. The OCC did not receive any comments on this number.

[41] This amount is based on an estimated per policy cost of $117 applied to 10 percent of the policies (322,642 policies × $117 per policy = $37.75 million), plus the cost to update policies and procedures of approximately $2.56 million. The time required to comply with the final rule is based on an estimate of approximately 1 hour per policy. The time required to update policies and procedures to address the final rule is based on an estimate of 20 hours per bank. To estimate compensation costs associated with the rule, the OCC uses $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation, plus an additional 34.2 percent to cover private sector benefits, based on our review of data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100).

[42] Because the OCC assumes that the 20 banks that reported mortgage servicing assets in excess of $100 million will bear more of the costs than the average bank, the OCC allocates 70 percent of the per policy costs to these 20 banks.

[43] This number is derived as follows: 322,642 policies × $117 per policy × .30 (percent of policies allocated to banks that did not report mortgage servicing assets in excess of $100 million) ÷ 1,074 banks (1,094 total banks minus the 20 banks that reported mortgage servicing assets in excess of $100 million). The estimated cost per bank to modify policies and procedures is $2,340.

[44] Twenty hours × $117 per hour.

4012a(b)(7) and the corresponding regulation.'' The final rule would also permit lenders to accept, at their discretion, flood insurance policies issued by private insurers, and plans issued by mutual aid societies, that do not meet the definition of ''private flood insurance,'' provided they meet certain conditions.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* The Board did not receive any comments on the initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* All state member banks that are subject to the Federal flood insurance statutes and the flood insurance provisions of Regulation H would be subject to the final rule. As of January 2, 2019, there were 794 State member banks. Under regulations issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of $550 million or less are considered small. Approximately 528 State member banks would be considered small entities by the SBA.

4. *Recordkeeping, reporting and compliance requirements.* The Board believes the final rule will not have a significant impact on small entities. First, the Board believes, based on comments received by the Agencies in response to the October 2013 and November 2016 Proposed Rules, that most existing flood insurance policies issued by private insurers would not meet the definition of ''private flood insurance'' under the Biggert-Waters Act and that insurers would likely request that lenders accept the policies under the more flexible discretionary acceptance provisions. The provisions on discretionary acceptance, including acceptance of plans issued by mutual aid societies, do not impose affirmative obligations upon lenders. Accordingly, regulated lending institutions may choose not to accept policies under those provisions and therefore would have no associated compliance burden.

Second, with respect to flood insurance policies that a private insurer would seek to have a lender accept under the mandatory acceptance provisions, the Board notes that those regulated lending institutions, including those that are considered small entities, accepting flood insurance policies issued by private insurers today already have experience evaluating policies with the criteria in the Biggert-Waters Act definition of ''private flood insurance.'' The Biggert-Waters Act criteria are almost identical to the criteria referenced in guidance that currently governs the acceptance of private policies by Federal Reserve-supervised institutions. Third, as discussed in the **SUPPLEMENTARY INFORMATION**, the Board believes the final rule would alleviate the burden on regulated lending institutions, including those that are considered small entities, of evaluating whether a flood insurance policy issued by a private insurer meets the definition of ''private flood insurance'' under the mandatory acceptance provisions with the addition of a compliance aid that leverages the expertise of the insurer issuing the policy.

Although the final rule could impact a substantial number of small entities, the Board estimates that the costs to these entities will not be significant. The Board estimates that the cost for each covered small entity will be approximately $7,630 during the first year the proposal goes into effect. This estimate includes first year compliance costs [45] and ongoing costs [46] and assumes that the usage of private flood insurance policies by borrower, as defined by the final rule, is distributed consistently across small entities. The actual ongoing cost estimate may be lower than stated because the estimate assumes that all of the policies for properties in High Risk Areas will cover loans held by Federal Reserve-supervised institutions when some of these loans may be held by institutions supervised by other Agencies.

5. *Significant alternatives to the final revisions.* The Board has not identified any significant alternatives that would reduce the regulatory burden associated with this final rule on small entities.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a final rule, to prepare and make available a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[47] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[48]

Description of Need and Policy Objectives

The objective of this rule is to enact the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). Existing regulations require lending institutions to ensure that loans secured by properties located in Special Flood Hazard Areas (SFHAs) are covered by flood insurance that provides sufficient protection for the loan. This rule requires lenders to accept private flood insurance policies in order to meet flood insurance requirements, if the private policies meet the statutory definition of ''private flood insurance'' as defined in Biggert-Waters. The rule also provides lending institutions with broad discretion to accept private flood insurance that does not meet the Biggert-Waters definition of ''private flood insurance'' provided that the policies meet minimum criteria such as providing sufficient protection for the lender and borrower and meeting existing flood insurance requirements.

Description of the Final Rule

A description of the rule is presented in Section III: Summary of the Final Rule. Please refer to it for further information.

Other Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflicts between the final rule and any other Federal rule.

Response to Comments Regarding the Regulatory Flexibility Act

The FDIC did not receive any public comments on the supporting information it presented in the RFA

[45] Fixed compliance costs are estimated assuming each small entity requires one full-time employee working 20 hours at a rate of $117 an hour. The total fixed cost of compliance for all 794 covered entities is approximately $1.858 million, or $2,340 for each small entity in the first year.

[46] Ongoing compliance costs are estimated based upon available data. According to FEMA's *Policy and Claim Statistics for Flood Insurance* there are approximately 5,080,300 flood insurance policies nationally as of October 2018. Only 3,182,833 of these policies are located in ''High Risk Areas'' and would therefore require flood insurance. The Board estimated the future adoption rate of private flood insurance will be approximately 10 percent of the total of flood insurance policies in any given year. Further, small entities hold approximately 7.5 percent of all loans secured by real estate held in portfolio by all Federal Reserve-supervised banks as of September 30, 2018. The Board therefore assumed that small entities will have to review a similar share of annual private flood insurance policies. Ongoing policy review costs are estimated to be approximately $5,290 per year for each small entity, assuming one labor hour per year, per policy, at $117 per hour.

[47] 5 U.S.C. 601 *et seq.*

[48] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

section of the Notice of Proposed Rulemaking.

The Agencies did receive public comments on the proposed rulemaking. A summary of those comments, and the Agencies' consideration of them, is presented in Section II. Many commenters stated that small institutions would be heavily burdened by the need to review private flood insurance policies to determine if the policies met the criteria for discretionary acceptance in the proposed rule. The Agencies have simplified the criteria for discretionary acceptance in the final rule so as to create less regulatory burden for lenders in general and for small institutions in particular.

Economic Impacts on Small Entities

The FDIC supervises 3,533 depository institutions, of which 2,726 are defined as small banking entities by the terms of the RFA.[49] This rule potentially affects all small entities that make loans secured by real estate. There are 2,716 FDIC-supervised small entities that hold some volume of loans secured by real estate and would therefore be affected by this rule,[50] so the rule potentially affects a substantial number of small entities. However, the FDIC does not believe the economic impact of the rule will be significant.

Banks do not report the number of loans issued that are secured by properties located in Special Flood Hazard Areas (SFHAs). However, FEMA reports that as of October 2018 there were 5,080,300 total flood insurance policies in force in the United States, and that 3,182,833 cover properties located in High Risk Areas and would therefore require flood insurance under existing regulations.[51] We assume that between one and ten percent, or 31,828 to 318,283 flood insurance policies, would be covered by private flood insurance as a result of adopting this rule.[52] This estimate does not count the number of existing private flood insurance policies; however, the FDIC believes that any such policies are likely included in the estimated range of flood insurance policies covered by private flood insurance.

The Federal Reserve estimates the total outstanding value of mortgage debt in the United States as of September 2018 at $15,269,457,000,000 and reports that $4,897,585,000,000 (32.07 percent) of mortgage debt is held by depository institutions.[53] Assuming that FDIC-insured institutions hold the same percentage of all flood insurance policies in SFHAs as they do of total outstanding mortgage debt, then FDIC-insured depository institutions hold a total of 1,020,735 loans in SFHAs covered by flood insurance policies,[54] of which 10,207 to 102,073 are assumed to be covered by private flood insurance.

Using Call Report data[55] and assuming that all FDIC-insured institutions hold the same percentage of total loans covered by flood insurance policies in SFHAs as they do of all mortgage debt, the FDIC calculates that depository institutions supervised by the FDIC hold between 2,971 and 29,707 loans covered by private flood insurance policies for properties located in SFHAs, and FDIC-supervised small entities hold between 535 and 5,350 loans covered by private flood insurance policies for properties located in SFHAs.

We assume that institutions will spend 45 minutes reviewing each private flood insurance policy and an additional 15 minutes documenting their conclusions (1 hour total) as a result of this rule. Under that assumption, and assuming an hourly cost of $112.32,[56] no small entities will incur costs resulting from this rule that exceed 2.5 percent of annual noninterest expense or 5 percent of annual salary expense.

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

Alternatives Considered

This final rule differs from the proposal by simplifying the criteria that a private flood insurance policy must meet in order for lenders to accept the policy so as to comply with existing flood insurance requirements. The Agencies retained some criteria that private flood insurance policies must meet in order for an institution to accept them.

The Agencies considered not including any discretionary acceptance criteria in the final rule, which would allow institutions to accept any private flood insurance policy and would potentially be less burdensome for small institutions. The Agencies included minimum criteria in order to ensure that flood insurance, whether from a public or private insurer, sufficiently protects lenders and borrowers. The Agencies also understand that many institutions are reluctant to accept private flood insurance at all since existing regulations are unclear about what they can and cannot accept. This final rule outlines minimum criteria for discretionary acceptance in order to clarify the regulatory treatment of private flood insurance policies for loans in SFHAs.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income more than the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

NCUA: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[57] Under section 605(b) of the RFA, this analysis is not required if an agency certifies that

[49] Call Report data, September 2018.

[50] *Ibid.*

[51] Federal Emergency Management Agency (FEMA). *Policy & Claim Statistics for Flood Insurance.* Accessed December 20, 2018. *https://www.fema.gov/policy-claim-statistics-flood-insurance.*

[52] A 2018 study estimated that private flood insurance accounts for 3.5 to 4.5 percent of primary residential flood insurance policies. This rule applies to both residential and commercial properties, so for this exercise we use an estimated maximum of 10 percent in order to arrive at a conservative estimate of the number of flood insurance policies covered by private flood insurance and to account for the fact that the prevalence of private flood insurance is likely to increase in the future. *See* Kousky, Carolyn, Howard Kunreuther, Brett Lingle, and Leonard Shabman, *The Emerging Private Residential Flood Insurance Market in the United States,* Wharton Risk Management and Decision Process Center: July 2018.

[53] Board of Governors of the Federal Reserve System. *Mortgage Debt Outstanding.* Accessed December 20, 2018. *https://www.federalreserve.gov/data/mortoutstand/current.htm.*

[54] 3,182,833 × .3207 = 1,020,735.

[55] Call Report data for September 2018 data show a total value of mortgage debt at depository institutions of $4,874,383,173,000 which is sufficiently close to the Federal Reserve's estimate to provide confidence that Call Report data and Federal Reserve data can be used together for this analysis.

[56] The estimate includes the May 2017 75th percentile hourly wage rate for Lawyers ($99.89) and Compliance Officers ($40.55) reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2017 and June 2018 (2.85 percent) and grossed up by 55.5 percent to account for non-monetary compensation as reported by the June 2018 Employer Costs for Employee Compensation Data. The calculation assumes that Lawyers and Compliance Officers would each complete 50 percent of the task of reviewing private flood insurance policies. The hourly cost estimate is calculated as (.50 * $159.77 + .50 * $64.86 = $112.32).

[57] 5 U.S.C. 603(a).

the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.[58] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[59] As of September 30, 2018, there are 3,862 small, Federally insured credit unions, and only about 2,593 of these credit unions would be affected by the final rule.

NCUA classifies the economic impact of total costs on a credit union as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. NCUA estimates that the average cost per small credit union is approximately $2,409 per year. Using this cost estimate, NCUA believes the final rule will have a significant economic impact on 62 small credit unions, which is not a substantial number. Therefore, NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[60] Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated annual UMRA cost is approximately $37.75 million.[61] This number is based on the cost of compliance with the final rule described in the OCC's RFA analysis of this final rule, minus the cost of updating policies and procedures, which is not mandated by the rule. Therefore, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

C. Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the Agencies)[62] have determined that this final rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

The OCC, FDIC, and NCUA each made a submission to OMB in connection with the proposed rule under the PRA. OMB instructed the OCC, FDIC, and NCUA to examine public comment in response to the proposed rule and include in the supporting statement of their submissions in connection with the final rule, a description of how they have responded to any public comments on the information collection, including comments on maximizing the practical utility of the collection and minimizing the burden. No comments were received regarding the information collection.

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB).

The collection of information that is subject to the PRA by this final rule is found in 12 CFR 22.3, 208.25(c), 339.3, and 760.3.

The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control numbers are 1557–0326 (OCC), 7100–0280 (Board), 3064–0120 (FDIC), and 3133–0190 (NCUA).

Under §§ 22.3(c)(3), 208.25(c)(3)(iii), 339.3(c)(3), and 760.3(c)(3), institutions have the discretion to accept a flood insurance policy issued by a private insurer that does not meet the definition of ''private flood insurance'' if, among other things, the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Under §§ 22.3(c)(4), 208.25(c)(3)(iv), 339.3(c)(4), and 760.3(c)(4), institutions may accept a private policy issued by a mutual aid society if, among other things, the coverage provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Burden Estimates

OCC

Number of respondents: 56,469 responses from 1,094 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 14,118 hours.

Board

Number of respondents: 15,904 responses from 791 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 3,976 hours.

FDIC

Number of respondents: 29,711 responses from 3,509 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 7,428 hours.

NCUA

Number of respondents: 10,990 responses from 4,164 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 2,705 hours.

These collections are available to the public at *www.reginfo.gov.*

Comments are invited on:

(a) Whether the information collections are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

D. Effective Date

The APA[63] requires that a substantive rule must be published not less than 30 days before its effective date, unless,

[58] 5 U.S.C. 605(b).

[59] 80 FR 57512 (September 24, 2015).

[60] Public Law 104–4, 109 Stat. 48 (1995), codified at 2 U.S.C. 1501 *et seq.*

[61] This is a conservative estimate because, although not required by UMRA, it includes the statutory mandate that banks accept policies that meet the definition of ''private flood insurance.''

[62] Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3).

[63] Codified at 5 U.S.C. 551 *et seq.*

among other things, the rule grants or recognizes an exemption or relieves a restriction.[64] Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations issued by a Federal banking agency[65] imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[66] The July 1, 2019 effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of February 20, 2019 and on the first day of a calendar quarter following publication, July 1, 2019.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the RCDRIA requires that each Federal banking agency,[67] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[68]

With respect to the effective date, the Federal banking agencies have considered the changes made by this final rule and believe that the effective date of July 1, 2019 should provide regulated lending institutions with adequate time to make appropriate adjustments to their review and closing process for designated loans to comply with these changes. With respect to administrative compliance requirements, the Federal banking agencies have considered the administrative burdens and the benefits of this final rule, and addressed them by modifying the proposed provision regarding the compliance aid for mandatory acceptance and the discretionary acceptance provision to make them simpler and less burdensome for regulated lending institutions. Further discussion of the Federal banking agencies' consideration of these provisions is found in other sections of this **SUPPLEMENTARY INFORMATION** section.

[64] 5 U.S.C. 553(d).

[65] For purposes of RCDRIA, ''Federal banking agency'' means the OCC, FDIC, and Board. *See* 12 U.S.C. 4801.

[66] 12 U.S.C. 4802(b).

[67] *Supra,* footnote 50.

[68] 12 U.S.C. 4802(a).

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and Recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. Section 22.2 is amended by:
■ a. Redesignating paragraphs (l) and (m) as (o) and (p), paragraphs (j) and (k) as (l) and (m), and paragraphs (h) and (i) as paragraphs (i) and (j); and
■ b. Adding new paragraphs (h) and (k) and paragraph (n).

The additions read as follows:

§ 22.2 Definitions.

* * * * *

(h) *Mutual aid society* means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

(k) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(i) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The national bank or Federal savings association that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

(n) *SFIP* means, for purposes of §§ 22.2(k), a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a national bank or Federal savings association.

* * * * *

■ 3. Section 22.3 is amended by adding paragraph (c) to read as follows:

§ 22.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*—(1) *Mandatory acceptance.* A national bank or Federal savings association must accept private flood insurance, as defined in § 22.2(k), in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A national bank or Federal savings association may determine that a policy meets the definition of private flood insurance in § 22.2(k), without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* A national bank or Federal savings association may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 22.2(k) in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the national bank or Federal savings association documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a national bank or Federal savings association may accept a plan issued by a mutual aid society, as defined in § 22.2(h), in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The OCC has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the national bank or Federal savings association documents its conclusion regarding sufficiency of the protection of the loan in writing.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is revised as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 4. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 5. Amend § 208.25 by revising paragraphs (b)(7) through (11) and adding paragraphs (b)(12) through (14) and (c)(3) to read as follows:

§ 208.25 Loans in areas having special flood hazards.

* * * * *

(b) * * *

(7) *Mutual aid society* means an organization—

(i) Whose members share a common religious, charitable, educational, or fraternal bond;

(ii) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(iii) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

(8) *NFIP* means the National Flood Insurance Program authorized under the Act.

(9) *Private flood insurance* means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(ii) Provides flood insurance coverage that is at least as broad as the coverage

provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(A) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(B) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(C) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(D) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(E) Not contain conditions that narrow the coverage provided in an SFIP;

(iii) Includes all of the following:

(A) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(*1*) The insured; and

(*2*) The member bank that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in an SFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

(10) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(11) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(12) *SFIP* means, for purposes of paragraph (b)(9) of this section, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a member bank.

(13) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(14) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) * * *

(3) *Private flood insurance*—(i) *Mandatory acceptance.* A member bank must accept private flood insurance, as defined in paragraph (b)(9) of this section, in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if the policy meets the requirements for coverage in paragraph (c)(1) of this section.

(ii) *Compliance aid for mandatory acceptance.* A member bank may determine that a policy meets the definition of private flood insurance in paragraph (b)(9) of this section, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(iii) *Discretionary acceptance.* A member bank may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in paragraph (b)(9) of this section in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if the policy:

(A) Provides coverage in the amount required by paragraph (c)(1) of this section;

(B) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(C) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(D) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the member bank documents its conclusion regarding sufficiency of the protection of the loan in writing.

(iv) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3)(iii) of this section, a member bank may accept a plan issued by a mutual aid society, as defined in paragraph (b)(7) of this section, in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if:

(A) The Board has determined that such plans qualify as flood insurance for purposes of the Act.

(B) The plan provides coverage in the amount required by paragraph (c)(1) of this section;

(C) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(D) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the member bank documents its conclusion regarding sufficiency of the protection of the loan in writing.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 339 of chapter III of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 6. The authority citation for part 339 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 7. Section 339.2 is amended by adding definitions for ''Mutual aid society'', ''Private flood insurance'', and ''SFIP'' in alphabetical order to read as follows:

§ 339.2 Definitions.

* * * * *

Mutual aid society means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(i) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The FDIC-supervised institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of §§ 339.2, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to an FDIC-supervised institution.

* * * * *

■ 8. Section 339.3 is amended by adding paragraph (c) to read as follows:

§ 339.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*—(1) *Mandatory acceptance.* An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* An FDIC-supervised institution may determine that a policy meets the definition of private flood insurance in § 339.2, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* An FDIC-supervised institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 339.2 in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the FDIC-supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, an FDIC-supervised institution may accept a plan issued by a mutual aid society, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The FDIC has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the FDIC-supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

FARM CREDIT ADMINISTRATION

12 CFR Chapter IV

Authority and Issuance

For the reasons set forth in the joint preamble, part 614, subpart S of chapter VI of title 12 of the Code of Federal Regulations, is revised as set forth below:

PART 614—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 9. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12,4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

■ 10. Amend Section 614.4925 by adding definitions for ''Mutual aid society'', ''Private flood insurance'', and ''SFIP'' in alphabetical order to read as follows:

§ 614.4925 Definitions.

* * * * *

Mutual aid society means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(i) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The System institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of § 614.4925, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a System institution.

* * * * *

■ 11. Section 614.4930 is amended by adding paragraph (c) to read as follows:

§ 614.4930 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance.*—(1) *Mandatory acceptance.* A System institution must accept private flood insurance, as defined in § 614.4925, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A System institution may determine that a policy meets the definition of private flood insurance in § 614.4925, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* A System institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 614.4925 in satisfaction of the flood insurance purchase requirement of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with

general safety and soundness principles, and the System institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a System institution may accept a plan issued by a mutual aid society, as defined in § 614.4925, in satisfaction of the flood insurance purchase requirement of this section if:

(i) The FCA has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the System institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA Board amends part 760 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 12. The authority citation for part 760 continues to read as follows:

Authority: 12 U.S.C. 1757, 1784(e), 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 13. Section 760.2 is amended by adding definitions for ''Mutual aid society'', ''Private flood insurance'', and ''SFIP'' in alphabetical order to read as follows:

§ 760.2 Definitions.

* * * * *

Mutual aid society means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(i) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The credit union that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of § 760.2, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a credit union.

* * * * *

■ 14. Section 760.3 is amended by adding paragraph (c) to read as follows:

§ 760.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*—(1) *Mandatory acceptance.* A credit union must accept private flood insurance, as defined in § 760.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A credit union may determine that a policy meets the definition of private flood insurance in § 760.2, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* A credit union may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 760.2 in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is

issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the credit union documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a credit union may accept a plan issued by a mutual aid society, as defined in § 760.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The NCUA has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the credit union documents its conclusion regarding sufficiency of the protection of the loan in writing.

Dated: January 24, 2019

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, February 7, 2019.

Ann E. Misback,

Secretary of the Board.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, on 25th day of January, 2019.

Valerie J. Best,

Assistant Executive Secretary.

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 5th day of February 2019

Dale L. Aultman,

Secretary.

By order of the Board of the National Credit Union Administration.

Dated at Alexandria, VA, this 31st day of January, 2019.

Gerard S. Poliquin,

Secretary of the Board.

[FR Doc. 2019–02650 Filed 2–19–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P

DEPARTMENT OF THE TREASURY

Office of Financial Research

12 CFR Part 1610

RIN 1505–AC58

Ongoing Data Collection of Centrally Cleared Transactions in the U.S. Repurchase Agreement Market

AGENCY: Office of Financial Research, Treasury.

ACTION: Final rule.

SUMMARY: The U.S. Department of the Treasury's Office of Financial Research (the ''Office'' or the ''OFR'') is adopting final rules (the ''Final Rules'') establishing a data collection covering centrally cleared transactions in the U.S. repurchase agreement (''repo'') market. This collection requires daily reporting to the Office by covered central counterparties (''CCPs''). The collected data will be used to support the work of the Financial Stability Oversight Council (the ''Council''), its member agencies, and the Office to identify and monitor risks to financial stability, and to support the calculation of certain reference rates.

DATES:

Effective date: This rule is effective April 22, 2019.

Compliance dates: See the amendment to 12 CFR 1610.10(e).

FOR FURTHER INFORMATION CONTACT: Matthew Reed, Chief Counsel, OFR, (202) 927–8164; John Zitko, Senior Counsel, OFR, (202) 927–8372; or Matthew McCormick, Research Economist, OFR, (202) 927–8215.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OFR is adopting the Final Rules to establish a data collection for centrally cleared transactions in the U.S. repo market. The Final Rules will require reporting by certain U.S. CCPs for repo transactions and will serve two primary purposes: (1) To enhance the ability of the Council, its member agencies, and the Office to identify and monitor risks to financial stability; and (2) to support the calculation of certain reference rates. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), the Office is authorized to issue rules and regulations in order to collect and standardize data to support the Council in fulfilling its purposes and duties, such as identifying risks to U.S. financial stability. The Council recommended a permanent collection of repo data in its 2016 annual report to Congress and, as required by law, the Office consulted with the Council on the schedule of collection in September 2016.[1] The Council maintained this recommendation in its 2017 annual report, and the Office provided a public update to the Council on November 16, 2017.[2] The Final Rules will require reporting on centrally cleared repo transactions comprising approximately one-quarter of all U.S. repo market transactions. Together with data collected regarding approximately another one-quarter of the market by the Federal Reserve Bank of New York (the ''FRBNY'') pursuant to the supervisory authority of the Board of Governors of the Federal Reserve System (the ''Federal Reserve Board''), the Final Rules mark an important step toward fully addressing the Council's recommendation. The expanded monitoring of the repo market made possible by the Final Rules will help fulfill the Council's purposes and duties because of the repo market's crucial role in providing short-term funding and performing other functions for U.S. markets, making it important for financial stability monitoring. The data will also support the calculation of the Secured Overnight Funding Rate (''SOFR''), which was selected by the Alternative Reference Rates Committee as its preferred alternative rate to the U.S. dollar London Interbank Offered Rate (''LIBOR''), as well as the Broad General Collateral Rate (''BGCR''), helping fulfill another Council recommendation on the creation of alternative reference rates.[3]

[1] *See* Minutes of the Financial Stability Oversight Council (September 22, 2016), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/September222016_minutes.pdf* and 12 U.S.C. 5344(b)(1)(B)(iii).

[2] *See* Financial Stability Oversight Council, meeting minutes (November 16, 2017), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/November162017_minutes.pdf,* and Office, OFR Update on Bilateral Repo Collection (November 22, 2017), *https://www.financialresearch.gov/from-the-managementteam/2017/11/22/ofr-update-on-bilateral-repocollection/.*

[3] *See* Financial Stability Oversight Council, *2014 Annual Report,* p. 10; *2015 Annual Report,* p. 17; *2016 Annual Report,* pp. 14–15; and *2017 Annual Report,* pp. 12–13, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Pages/2017-Annual-Report.aspx.*

The Office published a notice of proposed rulemaking on July 10, 2018 (the ''NPRM'' or the ''Proposed Rules''), and requested that any comments be submitted by September 10, 2018.[4] The Office received relevant comments on the NPRM from a clearing organization, a trade association, an asset manager, a standards advisory group, and a nonprofit foundation.[5] In general, all commenters supported the proposed data collection, noting such potential benefits as monitoring risks to financial stability and supporting the calculation of an alternative reference rate to LIBOR. In addition, commenters identified certain issues that the Office has addressed in the discussion below and, in some cases, through regulatory text changes reflected in the Final Rules. In making these changes, the Office intends to minimize the burden of the Final Rules while still assuring that the aims of the collection, as expressed in the NPRM and below, are met.

II. Description of Final Rules

The following discussion summarizes the NPRM, the comments received, and the Office's response to those comments, including modifications reflected in the Final Rules.

a. Purpose of Rules

As noted in the NPRM, the collection of data pursuant to the Final Rules has two primary purposes, both of which support the Council, its member agencies, and the Office in carrying out their responsibilities. First, the data will be used to identify and monitor financial stability risks in a significant portion of the U.S. repo market. Second, the data will be used to support the calculation of reference rates, including the SOFR. Both of these aims received strong support in the comment letters. Public commenters endorsed the enhancement of information on the U.S. repo market that is to be accomplished through the collection, and they also noted such data would strengthen the calculation method and resiliency of the collection mechanism for the SOFR.[6]

i. Importance of Centrally Cleared Repurchase Agreement Data for Monitoring Financial Stability Risks

The collection of data on the centrally cleared segments of the repo market marks an important step in fulfilling the Council's recommendation to expand and make permanent the collection of data on the U.S. repo market. The Council recommended a permanent collection of repo data in its 2016 annual report to improve transparency and risk monitoring, which was reiterated in its 2017 annual report.[7] The Office believes that the adopted approach of collecting certain cleared repo data from CCPs, which already obtain most or all of the requested data during trade processing, will result in lower aggregate costs to market participants than a collection from individual participants. As explained below, the Office believes that there is only one reporter currently covered by the Final Rules' scope: Fixed Income Clearing Corporation (''FICC''), a subsidiary of DTCC. FICC has indicated that on average, it matches, nets, settles, and risk-manages centrally cleared repo transactions valued at more than $1.7 trillion per day.[8] The collection is expected to result initially in reporting only from two FICC services: The General Collateral Finance Repo Service (''GCF Repo Service'') (a service that clears general collateral trades, in which the trade reported to the CCP is for a category of securities as opposed to a specific security), including FICC's Centrally Cleared Institutional Triparty Service; and the Delivery-Versus-Payment Service (''DVP Service'') (a specific-security repo service). This collection, together with existing data collections covering the tri-party repo market, will allow about half of the estimated activity in the U.S. repo market by volume to be analyzed and monitored.[9]

The collection of transactional data on centrally cleared repos is key to the Council's effective identification and monitoring of emerging threats to the stability of the U.S. financial system. The repo market has a number of critical functions with associated vulnerabilities that could give rise to conditions that could impair its ability to perform such functions.[10] These functions also create linkages between different financial markets and institutions, and therefore potential channels for the propagation of shocks through the wider financial system. These vulnerabilities have developed in the past into threats to U.S. financial stability, most notably during the 2007–09 financial crisis.[11]

Despite the vulnerabilities, only tri-party repo transactions are currently subject to a mandatory regulatory data collection. Data gaps and the absence of mandatory collections are a significant impediment to the ongoing ability of the market, the Council, Council member agencies, and the Office to monitor developments in the repo market and potential emerging threats to financial stability. The lack of comprehensive data on repos creates material blind spots with regard to the most active short-term funding market in the U.S. financial system. This mandatory collection is an important step in eliminating these blind spots.

From a financial stability perspective, it is important to monitor transactions in centrally cleared repo for three reasons. First, repos that are transacted through a CCP on a blind-brokered basis can act as a critical funding source for repo borrowers that are under stress. Uncleared repos backed by high-quality collateral can become sensitive to counterparty risk, potentially resulting in a run on an institution's funding.[12] Shifts in activity from specific-counterparty repos to blind-brokered transactions can therefore indicate market perceptions that a firm may be under stress.

Second, while counterparty risk is mitigated by the use of CCPs, adverse changes in the value of collateral can

[4] 83 FR 31896 (July 10, 2018).

[5] In total, the OFR received five substantive comments on the Proposed Rules, including letters from the Depository Trust & Clearing Corporation (''DTCC''), the Securities Industry and Financial Markets Association (''SIFMA''), Citadel L.L.C., The Standards Advisory Group of the International Organization for Standardization's (''ISO'') Technical Committee 68 for Financial Services (''ISO/TC 68''), and the Global Legal Entity Identifier (''LEI'') Foundation.

[6] *See, e.g.,* SIFMA letter, pp. 1–2.

[7] *See* Financial Stability Oversight Council, *2017 Annual Report,* p. 14, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf* and *2016 Annual Report,* p. 14, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf.*

[8] *See* Depository Trust & Clearing Corporation, DVP Repo Transactions, undated online content, *https://www.dtcclearning.com/products-and-services/fixed-income-clearing/government-securities-division-gsd/dvp-service/dvp-repo-transactions.html.*

[9] *See* Baklanova, Caglio, Cipriani, and Copeland (January 13, 2016), using a method first outlined in Copeland, et al., ''Lifting the Veil on the U.S. Bilateral Repo Market,'' Liberty Street Economics: *http://libertystreeteconomics.newyorkfed.org/2014/07/lifting-the-veil-on-the-us-bilateral-repo-market.html.*

[10] There are four functions that repo transactions can serve for individual participants: Low-risk cash investment, monetization of assets, transformation of collateral, and facilitation of hedging. Repos also benefit financial markets broadly by supporting secondary market efficiency and liquidity.

[11] During the financial crisis, the repo market first began to show stress in the summer of 2007, and runs on repos played a central role in the failures of Bear Stearns and Lehman Brothers. These threats can manifest quickly; the run on Bear Stearns took place over less than a week. *See* Financial Crisis Inquiry Commission, ''Conclusions of the Financial Crisis Inquiry Commission'' (January 2011), pp. 286–290.

[12] *See* Adam Copeland, Antoine Martin, and Martin Walker, ''Repo Runs: Evidence from the Tri-Party Repo Market'' (2011), *Federal Reserve Bank of New York Staff Reports.*

propagate shocks arising elsewhere in the financial system to CCP members by impacting their ability to borrow using centrally cleared repo.[13] Further, collateral held at tri-party custodian banks that is used in centrally cleared repos within the tri-party system is not available for delivery outside of the tri-party system, making information on the collateral used in this venue important for understanding broader market dynamics.

Third, while CCPs offer benefits in terms of settlement and risk management, they may also propagate shocks to their members in other ways. If a repo CCP were to fail during a period of market stress, the repo intermediation capacity of the financial system would be impaired. Even if this risk were judged to be remote, in a circumstance where, as here, there is significant market centralization, disruption of such a critical service could have severe implications. For these reasons, and as noted by the Council in its 2017 annual report, further monitoring and analysis of risks related to CCPs is appropriate.[14]

ii. Importance of Centrally Cleared Repurchase Agreement Data to Alternative Reference Rates

This collection is expected to support the calculation of reference rates including the SOFR, the Alternative Reference Rates Committee's preferred alternative reference rate to U.S. dollar LIBOR. The SOFR relies on data on repos backed by Treasury securities in three segments of the U.S. repo market. The Federal Reserve Board collects data for the tri-party portion through its supervisory authority over the clearing banks. While some data on GCF Repo Service and DVP Service transactions are available to the FRBNY through a voluntary agreement with an affiliate of FICC, DTCC Solutions LLC (''DTCC Solutions''), an expanded and ongoing mandatory collection of these data will increase confidence that the alternative reference rate's inputs will continue to be available. This is especially true if new CCPs enter the market. This viability is important because the long-term success of any alternative reference rate relies on the confidence of market participants.

Another benefit of this collection is the ability to require specific data fields from centrally cleared general collateral repo and centrally cleared specific-security repo services for use in reference rate calculation. The Office has reviewed these data fields with the FRBNY and believes the information will help to improve and ensure the ongoing quality of the SOFR and BGCR. From an early stage, the Office has contributed to the development of alternative reference rates and has designed this collection to maximize its compatibility with reference rate production. Some of the data fields in this collection are not currently received under the voluntary agreement between the FRBNY and DTCC Solutions, but will help ensure the continued quality of the rates. Most notably, the identity of transaction counterparties is important for rate calculation, as it allows the calculation agent to identify and, as appropriate, exclude transactions that may not be representative of market activity (*e.g.,* certain affiliate transactions). Further, by making available data on repos that are outside the current scope of the voluntary data collection, this collection will allow the Federal Reserve and the Office to better monitor the evolution of markets and ensure that the rates continue to target their intended underlying interests.

Finally, the collection will help ensure the long-term viability of the SOFR and BGCR by including within its scope reporting from any additional CCPs that meet the $50 billion activity-based materiality threshold in the future, regardless of their supervisor or regulator. This ensures rate production will include new comparable transactions in the calculation of the rate as U.S. repo markets evolve. This is of particular importance given that trading in products tied to the new rate might eventually subsume most volume that is currently tied to U.S. dollar LIBOR.

b. Uses of the Data Collection

The collection will be used by the Office to improve the ability of the Council, Council member agencies, and the Office to monitor the U.S. repo market and identify and assess potential financial stability risks. The additional daily transaction data this collection will facilitate identification of potential repo market vulnerabilities and will also help identify shifting repo market trends that could be destabilizing or indicate stresses elsewhere in the financial system. Such trends might be reflected in indicators of the volume or price of funding in the repo market at different tenors, differentiated by the type or credit quality of participants or the quality of underlying collateral. Further, analyzing the collateral data from this collection together with other data available to the Office, the Council, and Council member agencies will enable a clearer understanding of collateral flows in securities markets and potential financial stability risks.

As noted in the NPRM and consistent with the Dodd-Frank Act, the Office expects to share collected data and information with the Council and its member agencies, and such data and information must be maintained with at least the same level of security as used by the Office and may not be shared with any individual or entity without the permission of the Council.[15] On October 16, 2018, the Council voted unanimously to authorize the OFR to share with the FRBNY the data the OFR will collect under the Final Rules.[16] Accordingly, the Office will make available the data from this collection to the FRBNY for purposes of meeting the above monitoring and alternative reference rate objectives as well as other market analysis and research. The Office will also make data collected and maintained under this collection available to the Council and Council member agencies, as necessary to support their regulatory responsibilities.[17]

The sharing of any data from this collection will be subject to the confidentiality and security requirements of applicable laws, including the Dodd-Frank Act.[18] Pursuant to the Dodd-Frank Act, the submission of any non-publicly available data to the Office under this collection will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the data or information is otherwise subject.[19]

Aggregate or summary data from the collection might be provided to the public to increase market transparency and facilitate research on the financial

[13] The linkages between asset and funding markets create a risk of spillovers from one market to another because asset values help determine both the value of an asset as collateral and also the availability of funding for leveraged market participants that hold the asset. Price impacts on collateral arising forced asset sales due to a lack of confidence in such assets or in a particular counterparty can have widespread effects beyond the original transactions, leading to contagion that can culminate in broader fire sales and potential threats to financial stability. Further, the use of common underlying assets between different segments of the repo market therefore creates a channel through which centrally cleared repo transactions can be affected by activity in other portions of the repo market.

[14] *See* Financial Stability Oversight Council, *2017 Annual Report,* pp. 123–4, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf.*

[15] 12 U.S.C. 5343(b).

[16] See FSOC, Minutes of the Financial Stability Council dated October 16, 2018, *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/October162018_minutes.pdf.*

[17] 12 U.S.C. 5344(b)(5).

[18] *E.g.,* 12 U.S.C. 5343(b), 5344(b)(3).

[19] 12 U.S.C. 5322(d)(5).

system, to the extent that intellectual property rights are not violated, confidential business information is properly protected, and the sharing of such information poses no significant threats to the U.S. financial system.[20] The potential sharing of aggregate or summary data collected under the Final Rules would help fulfill a recommendation of the Council to make appropriately aggregated securities financing data available to the public.[21]

The Office may also use the data to sponsor and conduct additional research.[22] This research may include the use of these data to help fulfill the duties and purposes under the Dodd-Frank Act relating to the responsibility of the Office's Research and Analysis Center to develop and maintain independent analytical capabilities to support the Council and relating to the programmatic functions of the Office's Data Center.[23] For example, access to data on centrally cleared repos will allow the Office to conduct research related to the Council's analysis of potential risks arising from securities financing activities.

Two commenters requested that the Office provide more clarity regarding information security. One focused on the standard of care and the particular measures the Office will take to secure and protect the data collected in order to provide greater transparency and enable a constructive dialogue regarding the adequacy of such measures in the face of future technological developments.[24] The other stated its concern in light of the number of agencies and individuals within such agencies that may have access to the data.[25]

As noted above, the Office will, consistent with the Dodd-Frank Act, share data and information with the Council and its member agencies. As required by the Dodd-Frank Act, such data and information must be maintained with at least the same level of security as used by the Office and may not be shared with any individual or entity other than those specified in 12 U.S.C. 5343(b) without the permission of the Council.[26] For purposes of preventing unauthorized access to data, or loss of data, the Office is also subject to the Federal Information Security Modernization Act of 2014,[27] which requires that federal agencies, including the OFR and independent regulatory agencies, provide information security protections commensurate with the risk and magnitude of harm resulting from unauthorized access, use, or disclosure of information collected by or on behalf of an agency.

Additionally, U.S. federal employees are subject to government-wide regulations that prohibit the use of public office for private gain and impose other restrictions related to the use of nonpublic information.[28] Unauthorized disclosure of trade secrets and insider trading can result in criminal prosecution.[29] The information collected pursuant to the Final Rules will be handled in accordance with the OFR's data access, security, and control policies and procedures, and the Office will further comply with all applicable privacy and data protection laws and regulations that are now or that may in the future become applicable to it.

One commenter requested that specific data-handling procedures be delineated, depending on whether the data was to be used for risk monitoring and supervision, or academic research. This commenter suggested that certain enhanced protections could include anonymization or embargo of the data when it is to be used for academic research. It also recommended that the Office amend the Proposed Rules to set forth a standard with respect to the publication of any information that includes or is derived from the data to be collected, including in aggregate or summary form, that would prevent the disclosure of proprietary or confidential financial, operational, or trading data. In connection with such a standard, the commenter also suggested that the Office clarify a process by which a covered reporter (as defined in the regulation) would be permitted to review research prior to publication in order to confirm that the research does not reveal confidential information.[30]

Upon consideration, the Office declines to delineate between different data handling procedures in this manner. In light of the fact that the same personnel who take part in risk monitoring and supervision often additionally engage in academic research, with cross-functional benefits to each, the Office considers a demarcation between the two to be unworkable. Moreover, as noted above, 12 U.S.C. 5344(b)(6) provides that the Office shall, after consultation with Council member agencies, provide certain data to financial industry participants and the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, confidential business information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

Furthermore, the Office employs a number of targeted mechanisms to protect confidential business information. With respect to the data to be collected pursuant to the Final Rules, such mechanisms may include, at the discretion of the Office, providing data in an anonymized format; providing data on an embargoed basis; performing statistical analysis to verify that confidential business information cannot be reverse-engineered; and allowing covered reporters to review research prior to publication for purposes of confirming that such research does not reveal the confidential information of their members.

The same commenter recommended that the Office consider clarifying in the regulatory text how a Freedom of Information Act (''FOIA'')[31] request for confidential business information collected pursuant to a final rule would be treated, including the process for requesting confidential treatment of data submitted on a continuous basis via an automated process and by expressly identifying the exemptions that would be applicable to such data.[32]

In general, the FOIA provides for access to records maintained by a Federal agency. The provisions of the FOIA are intended to assure the right of the public to information, subject to the exemptions and exclusions set forth in the FOIA. The disclosure requirements of 5 U.S.C. 552(a) do not apply to records that are exempt under 5 U.S.C. 552(b), or to records that are excluded under 5 U.S.C. 552(c).

As an office within the Department of the Treasury, the Office considers the data to be collected pursuant to the Final Rules as records maintained by the Department of the Treasury pursuant to its FOIA regulations.[33]

[20] 12 U.S.C. 5344(b)(6).

[21] *See* Financial Stability Oversight Council, Council's *2017 Annual Report,* p. 16, *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf.*

[22] 12 U.S.C. 5343(b)(2).

[23] 12 U.S.C. 5344(b) discusses the Office's Data Center, and 12 U.S.C. 5344(c) discusses the various uses of data by the Office's Research and Analysis Center to support the Council.

[24] DTCC letter, pp. 2–3.

[25] SIFMA letter, p. 4.

[26] 12 U.S.C. 5343(b).

[27] Public Law 113–283.

[28] See 5 CFR 2635.702 (use of public office for private gain), 5 CFR 2635.703 (use of nonpublic information), and 18 U.S.C. 1905 (disclosure of confidential information generally).

[29] See 18 U.S.C. 1832 (theft of trade secrets) and 15 U.S.C. 78j (manipulative and deceptive devices).

[30] DTCC letter, pp. 3–4.

[31] 5 U.S.C. 552.

[32] DTCC letter, p. 3.

[33] See 31 CFR part 1, subpart A.

Upon receipt of a request for Treasury records, those records must be disclosed unless they are exempt or excluded under the FOIA. The Office expects that data collected under the Final Rules will likely contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' This type of information is subject to withholding under exemption 4 of the FOIA.[34] To the extent that data collected under the Final Rules contains or consists of data or information not subject to an applicable FOIA exemption, that data or information would be releasable under the FOIA.

c. Collection Design

i. Scope of Application

The Final Rules establish the scope of entities subject to the Final Rules. The Final Rules require reporting by any CCP whose average daily total open commitments in repos across all services over all business days during the prior calendar quarter is at least $50 billion. ''Open commitments'' is defined as the CCP's gross cash positions, prior to netting. Further, ''CCP'' is defined as a clearing agency that interposes itself between the counterparties to transactions, acting functionally as the buyer to every seller and the seller to every buyer. Finally, consistent with the NPRM, ''clearing agency'' is defined by reference to the Securities Exchange Act of 1934, as amended, which defines this term as ''any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.''[35]

The NPRM proposed that a CCP that becomes a covered reporter after the effective date of the Final Rules would be required to begin reporting on the first business day of the third calendar quarter after the calendar quarter in which the CCP meets the $50 billion activity-based materiality threshold. For example, if a CCP were to surpass the threshold beginning with the quarter ending on March 31 of a given year, that CCP would become subject to the reporting requirements of the Final Rules on the first business day of the calendar quarter that begins after two intervening calendar quarters—in this case, October 1. Conversely, the NPRM provided that a covered reporter whose volume falls below the $50 billion threshold for at least four consecutive calendar quarters would have its reporting obligations cease. For example, if a covered reporter ceases to meet the $50 billion threshold beginning with the quarter ending June 30 of a given year, and remains below the $50 billion threshold in each of the following three quarters (in this example, through the quarter ending March 31 of the following year), its reporting obligations would cease as of April 1.

As stated in the NPRM, the Office established a $50 billion volume threshold for determining whether a CCP is a covered reporter, and therefore required to report, with the objective of collecting data only from CCPs with sufficient transaction volume to be considered material CCPs in the repo market. Specifically noting that the proposed definition of covered reporter sought to include only current or future material repo CCPs within the scope of the Final Rules, the Office requested comment on whether the proposed definition met the objective and whether the $50 billion activity-based volume threshold for identifying covered reporters was clear and appropriate for ensuring the inclusion only of current or future material repo CCPs.

One commenter stated that the NPRM's focus on CCPs meeting the $50 billion threshold was appropriate (while noting that FICC was the only currently expected covered reporter), as such collection would ''gather information from the largest and most systemically important participants in the repo market.''[36] Another commenter, however, though not directly addressing the questions posed relating to materiality, suggested that the benefits to be gained from a collection of centrally cleared repo transactions were dependent not on the potential size of a covered reporter but, rather, on the collection of comprehensive data on repos. In support of increased transparency, the commenter suggested that the proposed materiality threshold would create a blind spot, and it encouraged the Office to remove it ''so that all central counterparties that clear repos must submit the required repo data to the Office.''[37]

The Office has considered the comments received and declines to change the activity-based volume threshold for identifying covered reporters. The $50 billion threshold serves to ensure that the collection does not apply to CCPs that are not material participants in relevant markets. The minimal additional market transparency that would be provided by collecting centrally cleared repo data from CCPs that do not meet the $50 billion threshold would not justify the burdens such a collection would impose on smaller market participants.

As stated in the NPRM, the Office understands that the full scope of transaction information on the centrally cleared repo market, which is required to fulfill the stated purposes of the collection, has not been available to the Council or Council member agencies, including the primary financial regulatory agency for clearing agencies. The Office believes that the lack of comprehensive data on repos has already created material blind spots with regard to the most active short-term funding market in the U.S. financial system, and that this collection will contribute significantly to eliminating these blind spots. The Final Rules require reporting on a market that comprises approximately one-quarter of all U.S. repo market transactions and, when combined with information collected about other types of repos by regulators, will enable access to transaction data on approximately half of U.S. repo market activity. The collection of data on the centrally cleared segments of the repo market also marks an important step in carrying out the Council's recommendation to expand and make permanent the collection of data on the U.S. repo market.

In executing both of these aims, however, the Office believes it reasonable to focus on those entities considered to be material in the relevant market, and it is mindful that establishing a lower threshold, or none at all, could place an inordinate burden on smaller entities. If the OFR finds in the future that a significant blind spot is created by a firm that remains just below the $50 billion threshold, it can consider expanding the collection of centrally cleared repo data at that time.

The same commenter that requested removing the $50 billion activities-based materiality threshold also suggested that tri-party custodian banks should be subject to the reporting requirements covered by the NPRM. As noted in the NPRM, certain custodian banks are already required to report certain tri-party repo data to the Federal Reserve Board, through the FRBNY, pursuant to its supervisory authority. The commenter stated that, even though ''it appears clear that the tri-party custodian banks provide the data the

[34] 5 U.S.C. 552(b)(4).

[35] 15 U.S.C. 78c(a)(23).

[36] SIFMA letter, p. 2.

[37] DTCC letter, p. 8.

FRBNY needs to calculate the SOFR on a mandatory basis,'' [38] incomplete or asymmetrical data sets could arise and affect the Council's and the Office's ability to identify and monitor risks to financial stability because it is not clear to what degree the scope and format of the tri-party custodian collection is identical to the collection proposed by the NPRM.

Upon consideration of this comment and after consultation with the Federal Reserve, the Office does not seek to include tri-party custodian banks within the definition of covered reporter in the Final Rules. Setting aside any potential impact that inclusion of custodian banks within the Final Rules could present on the already-existing collection pursuant to the Federal Reserve Board's supervisory authority, which is different than the Office's authority to collect data, the Office seeks to mitigate the reporting burden placed on financial companies. The Office is familiar with the data made available by the custodian banks, having used it for financial stability research, and believes that the relevant data elements are sufficiently aligned between the supervisory data and the data to be collected under the Final Rules to meet the monitoring and analysis needs of the Office.

The same commenter suggested that clarifying the definition of ''financial company'' and the scope of the Proposed Rules was necessary in order for a covered reporter to report data in a manner that complies with the Office's authority. Certain provisions of the Dodd-Frank Act authorize the Office to collect data from financial companies.[39] The commenter stated that, because the Office did not specifically limit the Proposed Rules' scope to the collection of data on repo activity of financial companies, it recommended amending the Proposed Rules to describe the process by which the Office would determine and identify to a covered reporter which of its members are deemed to be financial companies, so that a covered reporter could report the data for such entities.[40]

While repo activity is not necessarily limited to financial companies as defined in the Dodd-Frank Act, the Final Rules require reporting only by CCPs that are clearing agencies and that perform the central clearing function for repo transactions at or above the activities-based volume threshold. Moreover, the preamble of the NPRM noted that the definition of ''financial company'' [41] has the same meaning as in Title II of the Dodd-Frank Act and discussed why the Office believes the one expected covered reporter appears to meet such definition.[42] The Office also noted that we would expect future covered reporters to meet the financial company definition because they would be expected to be incorporated or organized under federal or state law and to be companies that are ''predominantly engaged'' in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 [43] (or a subsidiary thereof).[44]

The NPRM described the importance of centrally cleared repo data from CCPs for monitoring financial stability risks and the calculating reference rates.[45] Accordingly, because the Proposed Rules' reporting requirements were directed at CCPs within the Office's data-collection authority and provided reasons for the importance of gathering transaction information from such entities, the Office declines to amend the Proposed Rules in the manner requested.

ii. Information Required

A. Legal Entity Identifier

Unchanged from the Proposed Rules, the Final Rules require a covered reporter to submit the Legal Entity Identifier (the ''LEI'') of each covered reporter, direct clearing member, counterparty, and broker involved in a repo transaction. The NPRM noted the submission of LEIs would enhance the ability of the Council, Council member agencies, and the Office to identify potential risks to U.S. financial stability by facilitating an understanding of repo market participants' exposures, concentrations, and network structures. Precise identification of transaction counterparties is also important for rate calculation, as it allows the calculation agent to identify and, as appropriate, exclude transactions that may not be representative of market activity (*e.g.,* certain affiliate transactions). Under the Final Rules, the LEI reported must satisfy the standards implemented by the Global LEI Foundation. The proposed inclusion of the LEI as a mandatory data field for such purposes and according to the defined standards was widely supported and received no negative public comments.

However, one commenter (the only currently expected covered reporter) recommended a phased implementation process in order to allow a covered reporter sufficient time to take necessary measures to avoid compromising the integrity of the data covered by the proposed collection. This commenter recommended that the data elements requiring an LEI should be reported within 420 days after the effective date of the Final Rules. It suggested in part that a phase-in process was necessary to allow a covered reporter sufficient time to provide for any required rule filings with the Securities and Exchange Commission (the ''SEC'') that might be necessary to require market participants to obtain LEIs and then provide them to the covered reporter. The same commenter stated, however, that, while it did not anticipate being able to provide LEI information on the same schedule as the other data elements, it would ''work with the Office to provide sufficiently detailed identifying information (such as the alpha descriptor of the relevant market participants together with additional identifying information) . . . until LEI information is added to the relevant reports.'' [46]

The Office has considered this comment. The Office expects that covered reporters will take all feasible and appropriate steps to require that their platform participants obtain LEIs so that the covered reporters are in compliance with the LEI requirements of the Final Rules. As discussed in section II.c.iii.b below, the Final Rules adopt the commenter's requested phase-in period for data elements requiring an LEI; if a covered reporter is able to effect a rulemaking requiring each direct clearing member, counterparty, and broker associated with a repo transaction to obtain an LEI and provide it to that covered reporter, the covered reporter is required to begin reporting those LEIs within 420 days after the effective date of the Final Rules. In addition, in order to retain the benefits that entity identification provides for enhancing risk monitoring and reference rate creation, the Office has added basic entity identifier information for those fields applicable to each direct clearing member, counterparty, and broker involved in a repo transaction. The fields added will require reporting of each such entity's legal name and the internal identifier assigned to it by the covered reporter, which the Office

[38] DTCC letter, p. 8.

[39] See, *e.g.,* 12 U.S.C. 5344(b)(1)(B).

[40] DTCC letter, p. 9.

[41] 12 U.S.C. 5341(2).

[42] See 83 FR 31896 at 31903–04.

[43] 12 U.S.C. 1843(k).

[44] A ''financial company'' also includes a bank holding company or a nonbank financial company supervised by the Federal Reserve Board. 12 U.S.C. 5381(a)(11).

[45] See 83 FR 31896, 31901–02.

[46] DTCC letter, pp. 6–7.

understands to be readily available to the only currently expected covered reporter. To support an orderly transition for monitoring and rate calculation, these additional fields will be required to be reported either: (1) Until 365 days after the deadline for the covered reporter to begin reporting LEIs, if the covered reporter is able to effect a rulemaking requiring market participants to obtain LEIs and provide them to the covered reporter; or, (2) indefinitely, if a covered reporter is unable to effect such a rulemaking.

The NPRM requested comment on the manner by which the LEI should be included in the specific data fields for which it was required. Stating that it had no preference between the two options presented, the Office asked whether it would be preferable to include LEIs in messages regarding transactions, or to add LEIs of reporting entities and counterparties after the transactions take place but prior to submission of data to the Office.[47] Two comments were received on this issue, and both supported the position that LEIs should be added after the transactions take place, prior to submission of data to the Office. One commenter stated its belief that this option was preferable because it would require fewer parties to update their systems and that the centralization of the LEI reporting function would be not only more efficient but less complicated to implement by requiring fewer technology build-outs across the industry.[48] The other commenter recommended that the Office leave the methodology and timing of the collection and addition of LEIs to the discretion of the covered reporter because it believed such an approach would provide the necessary flexibility to the industry in both meeting the short-term challenges of implementing the changes to existing reporting and messaging systems, as well as allowing for evolution of services between covered reporters and their clients.[49] Because both comments favored allowing covered reporters to add LEIs of reporting entities and counterparties after the transactions take place but prior to submission of data to the Office, the Final Rules give covered reporters discretion and do not specify the manner by which the covered reporter will receive these LEIs.

One commenter recommended that the Final Rules include an explicit requirement that relevant market participants obtain and maintain LEIs in order to ensure that the requested data could be properly reported, pointing out that a covered reporter could not report LEI data for a market participant if such market participant has not obtained an LEI and supplied it to the covered reporter. Alternatively, the commenter maintained, the Final Rules should clarify that an LEI would only need be reported if and when available.[50] In another section of its letter, however, the same commenter recognized that a covered reporter could require its own members or market participants to provide LEIs through a rule filing with the SEC and noted the need to allow for evolution in services between covered reporters and their clients.[51] The Office believes that imposing the LEI requirement on covered reporters, rather than directly on a broader group of market participants, is a targeted approach that will better avoid undue burdens on market participants and ensure compliance with the scope of OFR's statutory data-collection authority.

As noted above, the Final Rules require reporting only from CCPs that meet the definition of ''financial company.'' They are not directed at non-financial companies or CCPs executing transactions below the $50 billion activity-based materiality threshold.

The NPRM discussed the importance of identifying the entities involved in repo transactions subject to the Final Rules to monitoring financial stability risks and calculating reference rates. For example, with respect to analysis of potential risks to U.S. financial stability, mandatory LEI reporting will benefit firms and regulators by improving the ability to combine repo information with other information, such as derivatives and other qualified financial contracts, to monitor financial firms and markets. For creation of reference rates, the LEIs of the various entities required under the Final Rules will facilitate evaluation of repo transactions and whether a repo transaction was conducted on an arm's-length basis or between affiliates.

The NPRM also stated the Office's belief that, while requiring the LEI may result in some additional compliance costs, doing so is reasonable and appropriate due to the added clarity and substantial benefit it provides for risk monitoring and rate production. Another commenter noted its belief that the relative sophistication of repo market participants, along with the requirements imposed by U.S. and foreign regulators (such as the recent Markets in Financial Instruments Directive 2 transaction reporting requirements), make it unlikely that obtaining and maintaining an LEI would be a burden for such participants. It agreed with the views expressed by the Office in the NPRM that the marginal burden of the obligation for some repo market participants to obtain and maintain an LEI is outweighed by the benefit associated with the collection under the Final Rules.[52] Moreover, as noted above, the Office is adopting the only currently expected covered reporter's requested LEI implementation timeline of 420 days[53] after the effective date of the Final Rules and believes that this timeframe will be sufficient to adopt any member rule changes necessary to effectuate the Final Rules.

The Office has considered the commenter's recommendation to directly require the relevant market participants to obtain and maintain LEIs and, for the reasons stated above, believes the better approach is to place requirements on covered reporters that meet the definition of ''financial companies.''

B. Price of Collateral/Security

One commenter recommended providing greater clarity with respect to the meanings of, and differences between, the terms ''Substitution Collateral Identifier'' and ''Substitution Collateral Identifier Type.''[54] Upon consideration of this comment, the OFR has modified the Final Rules to make clear that ''Substitution Collateral Identifier'' refers to the actual value of the identifier, which refers to a specific financial instrument. The field ''Substitution Collateral Identifier Type'' refers to the numbering system to which the identifier belongs, such as CUSIP.

iii. Submission Process and Implementation

A. Submission Process

Consistent with its intent noted in the NPRM, the Office will require submission through a collection agent, as it believes this approach will decrease the costs of compliance for covered reporters and allow data reporting to commence sooner than would otherwise be possible. As also specifically contemplated in the NPRM, the Federal Reserve Board will act as the Office's collection agent, with required data to be submitted directly by covered

[47] See 83 FR 31896, 31906.

[48] SIFMA letter, p. 4.

[49] DTCC letter, p. 6.

[50] DTCC letter, pp. 5–6.

[51] DTCC letter, p. 7.

[52] SIFMA letter, p. 3.

[53] DTCC letter, p. 7. We note that this commenter also suggested that delays may occur. We believe such delays to be speculative, rather than concrete time constraints.

[54] DTCC letter, p. 9.

reporters to the FRBNY. The FRBNY will transmit collected data to the Office.

As noted in Section II.b. above, the Council has authorized the OFR to share with the FRBNY the data the OFR will collect under the Final Rules. As a result, the FRBNY will have access to the reported data, in part, to produce the SOFR and BGCR. To produce these reference rate calculations, data on repo transactions must be submitted by covered reporters to the FRBNY no later than 6:00 a.m. Eastern time on the business day following the transaction. The submission process will allow for the secure, automated transmission of files. As contemplated in the NPRM, the Office is publishing concurrently with the Final Rules specific reporting instructions and technical guidance on the Office's website at *https://www.financialresearch.gov/data/cleared-repo-data* regarding matters such as data submission mechanics and formatting. As necessary, we will update these documents and publish any updates in the same location.

One commenter, a standards advisory group, recommended that its own standard, ISO 20022, could be of use in collecting data pursuant to the Final Rules.[55] Suggesting that ISO 20022 has comprehensive coverage of information related to repo processing, including definitions and messaging for both financings and the movement of collateral and cash, it also invited a dialogue with respect to ISO standards within its field of competence.

The Office has considered the comment received and studied the use of ISO 20022. The ISO 20022 standard is for transaction messaging, while the reporting required under the Final Rules is based not on transaction flow, but rather on a single readout of all transactions within a particular period. As a result, the Office has determined not to directly reference the ISO 20022 standard for use in collecting data pursuant to the Final Rules.

B. Implementation

The NPRM proposed that the Final Rules would go into effect 60 days after their publication in the **Federal Register** and that covered reporters would begin to comply with the Final Rules 60 days after their effective date. The Office believed that this implementation period would provide adequate time for covered reporters to comply with the proposed requirements. However, the Office requested comment on whether the proposed 60-day compliance period for a CCP that is a covered reporter on the effective date of the rule provided sufficient time to comply with the data-reporting requirements and whether increasing the period between the effective date of a final rule and the subsequent compliance date would substantially reduce burdens for covered reporters or repo market participants, or improve the quality of the data reported. It also specifically asked whether there were any aspects of the proposed collection for which a phased-in reporting requirement would be particularly useful.[56]

In response to these requests, the one currently expected covered reporter recommended that the proposed implementation timeframe be reconsidered. Specifically, it suggested, operational complexities related to the scale of the data-field builds required, along with necessary testing, militated in favor of a longer implementation timeframe. The commenter also stated that while it did not believe all of the information requested in the NPRM could be collected in the timeframe proposed, certain elements could be provided sooner than others.

As a result, the commenter recommended a phased implementation process, with all specified data elements, other than those requiring an LEI, to be reported within 240 days of the Final Rules' effective date. Data elements requiring LEI data would then be reported within 180 days after the compliance date for the other data elements. Such a phase-in process was necessary, it suggested, to allow a covered reporter sufficient time to take necessary measures to avoid compromising the integrity of the data to be collected. The implementation schedule suggested by the commenter was as follows:

Phase 1: FICC would transmit all of the data needed to calculate the SOFR and the BGCR in the same format that it currently supplies to the FRBNY 60 days after the effective date of a final rule.

Phase 2: FICC would begin reporting DVP Service repo transaction data (excluding the LEI) within 120 days after the Phase 1 compliance date (180 days after the effective date of a final rule).

Phase 3: FICC would begin reporting transaction data from the GCF Repo Service (excluding the LEI) within 60 days after the Phase 2 compliance date (240 days after the effective date of a final rule).

Phase 4: FICC would begin reporting LEI data associated with the DVP Service and GCF Repo Service transactions within 180 days after the phase 3 compliance date (420 days after the effective date of a final rule).

The Office has considered the comments received on this issue and has decided to adopt in the Final Rules a phased implementation schedule similar to that recommended by the only currently expected covered reporter. Specifically, the Office is adopting a three-phase implementation schedule for a CCP that is a covered reporter on the effective date of the Final Rules that corresponds to the latter three stages proposed by the commenter. Because the data elements currently needed to calculate the SOFR are a subset of those included in the proposed delivery-versus-payment and general collateral collections, and the FRBNY currently obtains that data through its voluntary agreement with DTCC, the Office does not believe that adopting a three-phase implementation schedule will create a gap in access to the data needed to calculate the SOFR.

As a result, the office is adopting a three-phase implementation schedule as follows:

Phase 1. With respect to all data elements listed in 12 CFR 1610.10(c)(5), other than those data elements requiring an LEI of an entity other than the covered reporter, a covered reporter shall begin reporting within 180 days after the Final Rules' effective date.

Phase 2. With respect to all data elements listed in 12 CFR 1610.10(c)(3) and (4), other than those data elements requiring an LEI of an entity other than the covered reporter, a covered reporter shall begin reporting within 240 days after the Final Rules' effective date.

Phase 3. With respect to all data elements listed in 12 CFR 1610.10(c)(3), (4), and (5) that require reporting an LEI of an entity other than the covered reporter, a covered reporter is required to begin reporting these elements within 420 days after the Final Rules' effective date, if the covered reporter is able to effect any rulemaking through the SEC that is necessary to require market participants to obtain LEIs and provide them to the covered reporter. If a covered reporter is unable to effect such a rulemaking through the SEC, the covered reporter would not be required to report an LEI for any market participant that does not have an LEI, but would be required to continue to report market participants' legal names or internal identifiers.

In order to provide a similar phased implementation schedule for any CCPs that become covered reporters after the effective date of the Final Rules, the Final Rules require such entities to comply with the reporting requirements beginning on the later of (i) the schedule applicable to CCPs that are covered reporters on the Final Rules' effective date or (ii) the first business day of the third calendar quarter following the calendar quarter in which such CCP meets the $50 billion activity-based materiality threshold.

The reporting obligations under the Final Rules would cease for any covered reporter that ceases to meet the $50

[55] ISO/TC 68 letter, p. 2.

[56] 83 FR 31896, 31907.

billion activity-based materiality threshold for at least four consecutive calendar quarters.

III. Administrative Law Matters

a. Paperwork Reduction Act

The information collections contained in the Final Rules have been reviewed and approved by the Office of Management and Budget (''OMB'') under OMB Control No. 1505–0259. In accordance with the requirements of the Paperwork Reduction Act (the ''PRA''), the Office may not conduct or sponsor, and a covered reporter is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Commenters on the Proposed Rules generally acknowledged the need for the Office to collect certain information on repo transactions in support of the work of the Council, its member agencies, and the Office for identifying and monitoring risks to financial stability, and to support the calculation of certain reference rates.

Commenters also requested various modifications to or relief from aspects of the Proposed Rules that they stated would entail burdens that outweighed the benefits to the Office. This included a recommendation from the only currently expected covered reporter for a phased implementation process, over a longer period of time than the Office had proposed. However, none of the commenters provided comments, empirical data, estimates of costs or benefits, or other analyses directly addressing matters pertaining to the PRA discussion.

The Office's ability to collect centrally cleared repo data in this collection derives in part from the authority to promulgate regulations regarding the type and scope of financial transaction and position data from financial companies on a schedule determined by the Director of the Office in consultation with the Council.[57] The Office consulted with the Council on the proposed permanent collection of repo data at the Council's September 22, 2016, meeting.[58] The Office also provided a public update to the Council on November 16, 2017.[59] The Office provided a further update to the Council on October 16, 2018, and the Council voted to authorize the Office to share with the FRBNY the data the Office will collect under the Final Rules.[60]

The Office also has authority to promulgate regulations pursuant to the Office's general rulemaking authority under Dodd-Frank Act section 153, which authorizes the Office to issue rules, regulations, and orders to the extent necessary to carry out certain purposes and duties of the Office.[61] In particular, the purposes and duties of the Office include supporting the Council in fulfilling its purposes and duties, and supporting Council member agencies, by collecting data on behalf of the Council and providing such data to the Council and Council member agencies, and standardizing the types and formats of data reported and collected.[62] The Office must consult with the Chairperson of the Council prior to the promulgation of any rules under section 153 [63]—these consultations occurred both before and after the publication of the NPRM.

As noted above, commenters generally did not provide comments, empirical data, or other analyses directly addressing the Office's estimates in the PRA discussion. As discussed in detail in section II above, the Final Rules incorporate changes from the Proposed Rules to provide for a phased implementation process, over a longer period of time than the Office had proposed. However, this change does not impact the scope of financial companies subject to the requirements of the Final Rules, nor the estimated annual burden on a covered reporter once the Final Rules are fully implemented.

As a result, the Office's estimate of an annual burden of 1,512 hours per covered reporter remains unchanged. This figure is arrived at by estimating the daily reporting time to be approximately 3 hours for each general collateral and specific-security submission, multiplied by 2 to reflect both types of submissions by the covered reporter, and multiplying that figure by an average of 252 business days in a year, the typical number of days per year that do not fall either on weekends or on holidays widely observed by the market.

To estimate hourly wages, the Office used data from the May 2016 Bureau of Labor Statistics Occupational Employment Statistics for credit intermediation and related activities (NAICS 522000). For hourly compensation, a figure of $75 per hour was used, which is an average of the 90th percentile wages in seven different categories of employment (compliance officers, accountants and auditors, lawyers, management occupations, financial analysts, software developers, and statisticians), plus an additional 32 percent to cover subsequent wage gains and non-wage benefits, which yields an estimate of $99 per hour.[64] Using these assumptions, the Office estimates the recurring operational costs for general collateral and specific-security submissions to be $74,844 annually, for a total estimated annual cost to the covered reporter of $149,688.

b. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the ''RFA'') to address concerns related to the effects of agency rules on small entities.[65] The Office is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[66] In accordance with section 3(a) of the RFA, the Office is certifying that the Final Rules will not have a significant economic impact on a substantial number of small entities.

As discussed above, this rule will only apply to CCPs for repos whose average daily total open commitments in repos across all services over the prior calendar quarter is at least $50 billion. Currently, under this scope, this rule will apply only to one entity,

[57] 12 U.S.C. 5344(b)(1)(B)(iii).

[58] *See* Financial Stability Oversight Council, meeting minutes (September 22, 2016), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/September222016_minutes.pdf.*

[59] *See* Financial Stability Oversight Council, meeting minutes (November 16, 2017), *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/November162017_minutes.pdf,* and Office, OFR Update on Bilateral Repo Collection (November 22, 2017), *https://www.financialresearch.gov/from-the-management-team/2017/11/22/ofr-update-on-bilateral-repo-collection/.*

[60] See FSOC, Minutes of the Financial Stability Council dated October 16, 2018, *https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/October162018_minutes.pdf.*

[61] 12 U.S.C. 5343(a), (c)(1).

[62] 12 U.S.C. 5343(a). The Council's purposes and duties include identifying risks to U.S. financial stability; responding to emerging threats to the stability of the U.S. financial system; monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability; making recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; and identifying gaps in regulation that could pose risks to the financial stability of the United States. 12 U.S.C. 5322(a).

[63] 12 U.S.C. 5343(c)(1).

[64] The estimate includes an assumed additional 2 percent for subsequent wage gains from 2016 to 2017, and 30 percent for non-wage employee benefits, according to the Bureau of Labor Statistics' June 2017 Employer Costs for Employee Compensation, *https://www.bls.gov/news.release/archives/ecec_09082017.htm.*

[65] 5 U.S.C. 601 *et seq.*

[66] 5 U.S.C. 603(a).

whose corporate parent's total consolidated assets were $39 billion as of March 31, 2018.[67] Reporting will be required of additional CCPs beginning on the later of (i) the schedule outlined in 12 CFR 1610.10(e)(1)(A), (B), and (C) or (ii) the first business day of the third calendar quarter after the calendar quarter in which such CCPs meet the $50 billion activity-based materiality threshold. If a covered reporter ceases to meet this threshold for at least four consecutive calendar quarters, its reporting obligations under this rule would cease.

Under regulations issued by the Small Business Administration, a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7.5 million in assets to $550 million or less in assets.[68] For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to $550 million. The level of the activity-based threshold under the Final Rules ensures that any respondent will be well beyond these small entity definitions.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities.

c. Congressional Review Act (CRA)

This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.*

List of Subjects in 12 CFR Part 1610

Confidential business information, Economic statistics, Reference rates, Repurchase agreements, Clearing, Central counterparty, Data collection.

■ For the reasons stated in the preamble, the Office of Financial Research adds part 1610 to 12 CFR chapter 16 to read as follows:

PART 1610—REGULATORY DATA COLLECTIONS

Subpart A—Collections Generally

Sec.
1610.1 General authority.
1610.2 General definitions.
1610.3 Treatment of collected information.
1610.4–1610.9 [Reserved]

Subpart B—Specific Collections

1610.10 Centrally cleared repurchase agreement data.

Authority: 12 U.S.C. 5343 and 5344.

Subpart A—Collections Generally

§ 1610.1 General authority.

The collections under this part are made pursuant to the authority contained in 12 U.S.C. 5343(a) and (c)(1) and 5344(b).

§ 1610.2 General definitions.

Council means the Financial Stability Oversight Council.

Legal Entity Identifier or LEI for an entity means the global legal entity identifier maintained for such entity by a utility accredited by the Global LEI Foundation or by a utility endorsed by the Regulatory Oversight Committee that satisfies the standards implemented by the Global LEI Foundation. As used in this definition:

(1) Regulatory Oversight Committee means the Regulatory Oversight Committee (of the Global LEI System), whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board, or any successor thereof; and

(2) Global LEI Foundation means the not-for-profit organization organized under Swiss law by the Financial Stability Board in 2014, or any successor thereof.

Office means the U.S. Department of the Treasury's Office of Financial Research.

§ 1610.3 Treatment of collected information.

The Office will treat any financial transaction data or position data submitted to the Data Center under this part in accordance with the relevant provisions of law, including 12 U.S.C. 5343(b) and 5344(b).

§§ 1610.4–1610.9 [Reserved]

Subpart B—Specific Collections

§ 1610.10 Centrally cleared repurchase agreement data.

(a) *Definitions.*

Central counterparty means a clearing agency that interposes itself between the counterparties to transactions, acting functionally as the buyer to every seller and the seller to every buyer.

Clearing agency has the same meaning as set forth in 15 U.S.C. 78c(a)(23).

Covered reporter means any central counterparty for repurchase agreement transactions that meets the criteria set forth in paragraph (b)(2) of this section; provided, however, that any covered reporter shall cease to be a covered reporter only if it does not meet the dollar threshold specified in paragraph (b)(2) for at least four consecutive calendar quarters.

General collateral trade means a repurchase agreement transaction in which the trade reported to the central counterparty is for a category of securities as opposed to a specific security.

Repurchase agreement transaction or transaction means an agreement of a counterparty to transfer securities to another counterparty in exchange for the receipt of cash, and the simultaneous agreement of the former counterparty to later reacquire the same securities (or any subsequently substituted securities) from that same counterparty in exchange for the payment of cash; or an agreement of a counterparty to acquire securities from another counterparty in exchange for the payment of cash, and the simultaneous agreement of the former party to later transfer back the same securities (or any subsequently substituted securities) to the latter counterparty in exchange for the receipt of cash.

Specific-security trade means a repurchase agreement transaction where the trade as reported to the central counterparty is for a mutually agreed upon specific security.

(b) *Purpose and scope*—(1) *Purpose.* The purpose of this data collection is to require the reporting of certain information to the Office about repurchase agreement transactions cleared through a central counterparty. The information will be used by the Office to support the Council and Council member agencies by facilitating financial stability monitoring including research consistent with support of the Council and its member agencies, and to support the calculation of certain reference rates.

(2) *Scope of application.* Reporting under this Section is required by any central counterparty for repurchase agreement transactions that meets the definition of financial company set forth in 12 U.S.C. 5341(2) and whose average daily total open commitments in repurchase agreement contracts (gross cash positions prior to netting) across all services over all business days during the prior calendar quarter is at least $50 billion.

(c) *Data required.* (1) Covered reporters shall report trade and collateral information on all repurchase agreement transactions cleared through any of its services, subject to paragraph (c)(2) of this section, in accordance with the prescribed reporting format in this section.

(2) Covered reporters shall only report trade and collateral information with

[67] *See* DTCC, ''DTCC Condensed Consolidated Financial Statements as of March 31, 2018 and December 31, 2017 and for the three months ended March 31, 2018 and 2017,'' *http://www.dtcc.com/~/media/Files/Downloads/legal/financials/2018/DTCC-Condensed-Consolidated-Financial-Statements-Q1-2018.pdf.*

[68] 13 CFR 121.201.

respect to any repurchase agreement transaction for which there is a current or future delivery obligation as of the file observation date, including forward-starting transactions.

(3) Covered reporters shall submit the following data elements for all general collateral trades:

TABLE 1 TO § 1610.10(c)—GENERAL COLLATERAL TRADES

Data element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted).
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter.
Transaction ID	Respondent-generated unique transaction identifier.
Submission Timestamp	Time that trade is first submitted to clearing service.
Match Timestamp	Time that trade is matched by clearing service.
Securities Asset Class Identifier Value	Asset class identifier.
Securities Asset Class Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs).
Cash Provider LEI	The Legal Entity Identifier of the cash provider.
Cash Provider Name	The legal name of the cash provider.
Cash Provider Internal Identifier	The internal identifier assigned by the covered reporter to the cash provider.
Cash Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service.
Cash Provider Direct Clearing Member Name	The legal name of the of the direct clearing member through which the cash provider accessed the clearing service.
Cash Provider Direct Clearing Member Internal Identifier.	The internal identifier assigned by the covered reporter to the direct clearing member through which the cash provider accessed the clearing service.
Securities Provider LEI	The Legal Entity Identifier of the securities provider.
Securities Provider Name	The legal name of the securities provider.
Securities Provider Internal Identifier	The internal identifier assigned by the covered reporter to the securities provider.
Securities Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service.
Securities Provider Direct Clearing Member Name.	The legal name of the direct clearing member through which the securities provider accessed the clearing service.
Securities Provider Direct Clearing Member Internal Identifier.	The internal identifier assigned by the covered reporter to the direct clearing member through which the securities provider accessed the clearing service.
Broker LEI	The Legal Entity Identifier of the broker.
Broker Name	The legal name of the broker.
Broker Internal Identifier	The internal identifier assigned by the covered reporter to the broker.
Start Date	The start date of the repurchase agreement.
End Date	The date the repurchase agreement matures.
Rate	The repurchase agreement rate, expressed as an annual percentage rate on an actual/360-day basis.
Principal	The amount of cash borrowed or lent.
Optionality	The type of optionality, if any, in the repurchase agreement.
Minimum Maturity	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).

(4) Covered reporters shall submit the following data elements on the collateral delivered against net general collateral exposures for all general collateral trades:

TABLE 2 TO § 1610.10(c)—GENERAL COLLATERAL NET EXPOSURE

Data element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted).
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter.
Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member of the clearing service.
Direct Clearing Member Name	The legal name of the direct clearing member.
Direct Clearing Member Internal Identifier	The internal identifier assigned by the covered reporter to the direct clearing member.
Transaction Side	Indicates the side of the transaction: Collateral was received by or delivered from the covered reporter.
Securities Identifier Value	Identifier of securities transferred.
Securities Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs).
Securities Quantity	Par value or quantity (as applicable) of securities transferred.
Securities Value	The market value as of most recent valuation of securities transferred, including accrued interest.

(5) Covered reporters shall submit the following data elements for all specific-security trades:

TABLE 3 TO § 1610.10(c)—SPECIFIC-SECURITY TRADES

Data element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted).
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter.
Transaction ID	Respondent-generated unique transaction identifier.
Cash Provider LEI	The Legal Entity Identifier of the cash provider.
Cash Provider Name	The legal name of the cash provider.
Cash Provider Internal Identifier	The internal identifier assigned by the covered reporter to the cash provider.
Cash Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service.
Cash Provider Direct Clearing Member Name	The legal name of the of the direct clearing member through which the cash provider accessed the clearing service.
Cash Provider Direct Clearing Member Internal Identifier.	The internal identifier assigned by the covered reporter to the direct clearing member through which the cash provider accessed the clearing service.
Securities Provider LEI	The Legal Entity Identifier of the securities provider.
Securities Provider Name	The legal name of the securities provider.
Securities Provider Internal Identifier	The internal identifier assigned by the covered reporter to the securities provider.
Securities Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service.
Securities Provider Direct Clearing Member Name.	The legal name of the direct clearing member through which the securities provider accessed the clearing service.
Securities Provider Direct Clearing Member Internal Identifier.	The internal identifier assigned by the covered reporter to the direct clearing member through which the securities provider accessed the clearing service.
Broker LEI	The Legal Entity Identifier of the broker.
Broker Name	The legal name of the broker.
Broker Internal Identifier	The internal identifier assigned by the covered reporter to the broker.
Submission Timestamp	Time that trade is first submitted to clearing service.
Match Timestamp	Time that trade is matched by clearing service.
Start Date	The start date of the repurchase agreement.
End Date	The date when the repurchase agreement matures; the close leg settlement date.
Optionality	The type of optionality, if any.
Minimum Maturity	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).
Security Identifier Value	Identifier of pledged security.
Securities Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs).
Securities Quantity	Par value or quantity (as applicable) of securities transferred.
Substitution Collateral Identifier Value	Asset class identifier or no substitution.
Substitution Collateral Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs).
Cash Provider Start Leg Amount	The amount of cash transferred by the cash provider on the open leg of the transaction.
Securities Provider Start Leg Amount	The amount of cash received by the securities provider on the open leg of the transaction.
Cash Provider Rate	The rate of interest received by the cash provider, expressed as an annual percentage rate on an actual/360-day basis.
Securities Provider Rate	The rate of interest paid by the securities provider, expressed as an annual percentage rate on an actual/360-day basis.
Cash Provider Close Leg Settlement Amount	The amount of cash received by the cash provider on the close leg of the transaction.
Securities Provider Close Leg Settlement Amount.	The amount of cash paid by the securities provider on the close leg of the transaction.

(d) *Reporting process and collection agent.* The Office may designate a collection agent for the data reporting. Covered reporters shall submit the required data for each business day by 6:00 a.m. Eastern time on the following business day.

(e) *Compliance.* (1) Any central counterparty that is a covered reporter as of the effective date of this Section shall comply with the reporting requirements pursuant to this Section in the following manner:

(i) Subject to paragraph (e)(1)(iii) of this section, a covered reporter shall begin reporting all data elements required to be submitted pursuant to paragraph (c)(5) of this section within 180 days after April 22, 2019.

(ii) Subject to paragraph (e)(1)(iii) of this section, a covered reporter shall begin reporting all data elements required to be submitted pursuant to paragraphs (c)(3) and (4) of this section within 240 days after April 22, 2019.

(iii) If a covered reporter is able to effect a rulemaking through the Securities and Exchange Commission requiring each direct clearing member, counterparty, and broker associated with a repurchase agreement transaction to obtain an LEI and provide it to the covered reporter, the covered reporter shall begin reporting all data elements requiring an LEI other than its own pursuant to paragraphs (c)(3) through (5) of this section by the later of the effective date of its rulemaking, or 420 days April 22, 2019, and continue to report all data elements requiring a legal name or internal identifier until 365 days after the date the covered reporter begins reporting all data elements requiring an LEI pursuant to this section. If a covered reporter is unable to effect such a rulemaking, the covered reporter is not required to report any data elements requiring an LEI other than its own pursuant to paragraphs (c)(3) through (5) of this section, except, if available, the LEI for any direct clearing member, counterparty, or broker associated with a repurchase agreement transaction that has an LEI, and shall report all data elements requiring a legal name or internal identifier in any report submitted under this section regardless of whether the relevant entity has an LEI. A covered reporter shall report its own LEI in accordance with the schedules set forth

in paragraphs (e)(1)(i) and (ii) of this section.

(2) The first submission by any central counterparty that is a covered reporter as of the effective date of this Section shall be submitted on the first business day after the applicable compliance date under paragraph (e)(1) of this section.

Note 1 to paragraph (e)(2): For example, if this section became effective on March 20, 2019, a central counterparty that meets the dollar threshold specified in paragraph (b)(2) of this section for the calendar quarter ending December 31, 2018, would be required to submit its first report under paragraph (e)(1)(i) of this section on the first business day after September 16, 2019, its first report under paragraph (e)(1)(ii) of this section on November 15, 2019, and its first report with data elements requiring an LEI (other than that of the covered reporter) on May 13, 2020 (if the covered reporter effected the rulemaking described in paragraph (e)(1)(iii) of this section).

(3) Any central counterparty that becomes a covered reporter after the effective date of this Section shall comply with the reporting requirements pursuant to this Section beginning on the later of the schedule set forth in paragraphs (e)(1)(i) through (iii) of this section or the first business day of the third calendar quarter following the calendar quarter in which such central counterparty meets the dollar threshold specified in paragraph (b)(2) of this section.

Note 2 to paragraph (e)(3): For example, if this section became effective on March 20, 2019, a central counterparty that first meets the dollar threshold specified in paragraph (b)(2) of this section for the calendar quarter ending June 30, 2019, would be required to submit its first report under paragraphs (e)(1)(i) and (ii) of this section on January 2, 2020, and its first report with data elements requiring an LEI (other than that of the covered reporter) on May 13, 2020 (if the covered reporter effected the rulemaking described in paragraph (e)(1)(iii) of this section by May 13, 2020).

Note 3 to paragraph (e)(3): For example, if this section became effective on March 20, 2019, a central counterparty that first met the dollar threshold specified in paragraph (b)(2) for the calendar quarter ending June 30, 2020, would be required to comply with all of the reporting requirements under this section on January 2, 2021 (and would continue to be required to report all data elements requiring a legal name or internal identifier for at least 365 days after the effective date of the covered reporter's rulemaking described in paragraph (e)(1)(iii) if such effective date occurred after January 2, 2021).

Ryan D. Brady,

Executive Secretary, Department of the Treasury.

[FR Doc. 2019–02639 Filed 2–19–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0505; Product Identifier 2017–NE–15–AD; Amendment 39–19472; AD 2018–21–14]

RIN 2120–AA64

Airworthiness Directives; Zodiac Aerotechnics Oxygen Mask Regulators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Zodiac Aerotechnics (Zodiac) oxygen mask regulators. This AD was prompted by reports that certain silicon harness inflation hoses installed on certain flight crew quick donning mask harnesses have shown an unusually high premature rupture rate. This AD requires inspection and replacement of certain oxygen mask regulator harness inflation hoses. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 27, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 27, 2019.

ADDRESSES: For service information identified in this final rule, contact Zodiac Aerotechnics, 61 rue Pierre Curie BP 1, 78373 Plaisir, CEDEX, France; phone: +33 1 6486 6964; email: *Christophe.besset@zodiacaerospace.com* or *Yann.laine@zodiacaerospace.com.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0505.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0505; 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), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) 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: Erin King, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone 781–238–7655; fax: 781–238–7199; email: *erin.king@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Zodiac oxygen mask regulators. The NPRM published in the **Federal Register** on September 25, 2017 (82 FR 44539). The NPRM was prompted by reports that certain silicon harness inflation hoses installed on certain flight crew quick donning mask harnesses have shown an unusually high premature rupture rate. The NPRM proposed to require an inspection and replacement of oxygen mask regulator harness inflation hoses. We are issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2014–0142, Revision 01, dated June 11, 2014 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Recent reported occurrences have shown that for harness hoses P/N 445952, installed on certain flight crew quick donning mask harnesses (also known as 'comfort' harness) having P/N MXH21–1, suspected silicon batches may have been used during manufacture, which have shown an unusually high premature rupture rate. The affected P/N MXH21–1 inflatable harness assembly consists of two main parts that can be disassembled; the harness itself and the harness inflation hose, P/N 445952.
>
> This condition, if not detected and corrected, could lead, in case of a sudden depressurization event, to a harness rupture, thereby providing inadequate protection against hypoxia of the affected flight crew member, possibly resulting in unconsciousness and consequent reduced control of the aeroplane.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0505.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Comment To Figure Reference in Service Information

NetJets Aviation, Inc. (NetJets) commented that Accomplishment Instructions, paragraph 3.A.(1) of Zodiac Aerospace Service Bulletin (SB) MC10–35–274, Revision 02, dated June 25, 2014, references Figure 3; however, there are only Figures 1 and 2 in this SB.

We agree that Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014, references Figure 3 in error. The FAA, however, is not responsible for administrative errors in SBs. We did not change this AD.

Request To Revise Part for Installation Eligibility

American Airlines (AA) requested that we revise the phrase in paragraph (h)(2) of the NPRM from ''inflatable harness assembly'' to ''crew oxygen mask regulator.'' AA reasoned that paragraph 1.A.(1) of Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014, includes both the inflatable harness assembly part numbers (P/Ns) as well as the crew oxygen mask regulator P/Ns. The intent is to check the crew oxygen mask regulator for installation eligibility.

We agree. We revised the paragraphs in this AD that refer to parts eligible for installation as the ''crew oxygen mask regulator.''

Request To Add Credit for Previous Actions Paragraph

AA and NetJets requested that we add a Credit For Previous Actions paragraph to this AD. AA asked that we give credit for actions required by this AD if those actions were performed before the effective date of this AD using Zodiac Aerospace SB MC10–35–274, Revision 01, dated April 18, 2014, or Original Issue, dated March 19, 2014. NetJets asked that in addition to the SBs mentioned above, we also give credit for using EASA AD 2014–0142, Revision 01, dated June 11, 2014, to accomplish the actions required by this AD. AA reasoned that EASA AD 2014–0142, Revision 01, dated June 11, 2014, allows for compliance with earlier revisions of the service information.

We partially agree. We agree to give credit for accomplishing the required actions if operators used Zodiac Aerospace SB MC10–35–274, Revision 01, dated April 18, 2014, or Zodiac Aerospace SB MC10–35–274, Original Issue, dated March 19, 2014, because this meets the intended safety requirements of this AD. We added a Credit For Previous Actions paragraph to this AD.

We disagree with revising the AD to allow for previous credit for performing EASA AD 2014–0142, Revision 01, dated June 11, 2014, because this is not necessary and is inconsistent with how we draft ADs.

Request To Clarify the Oxygen Mask Regulator Prohibition

AA, NetJets, and United Airlines (United) requested clarification regarding the oxygen mask regulator prohibition in the Installation Prohibition paragraph of this AD. The commenters reasoned that paragraph (h)(1), as proposed in the NPRM, prohibited the installation of certain oxygen mask regulators; whereas, paragraphs (h)(2) and (3) in the NPRM describe criteria that allow installation. AA requested that we remove paragraph (h)(1) of this AD. NetJets requested clarification and possible rewording of paragraph (h)(1) of this AD. United suggested rewording and reformatting of paragraph (h)(1) of this AD.

We partially agree. We agree that we need to clarify this AD to more clearly describe when a flight crew oxygen mask regulator is eligible for installation. We revised the Installation Prohibition paragraph by moving paragraphs (h)(2) and (3) into a Definition paragraph. We also revised paragraph (h)(1) of the NPRM, now paragraph (h) in the final rule, to allow the installation of certain oxygen mask regulators when they meet the criteria specified in paragraph (i)(1) of this AD.

We disagree with removing paragraph (h)(1) from this AD (paragraph (h) in the final rule) because oxygen mask regulators with a P/N listed in Paragraph 1.A.(1) of Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014, cannot be installed unless they meet the criteria specified in paragraph (i), Definition, of this AD.

Request To Remove Hose Part Numbers

United requested that we clarify references to specific harness inflation hose P/Ns in the Applicability paragraph, paragraph (c), and the Required Actions paragraph, specifically paragraphs (g)(2) and (3), of this AD. United noted that these P/Ns are not identified on the inflation harness assemblies after the hoses are installed on a crew oxygen mask assembly. United reasoned that although detailed shop records would likely itemize the hose P/Ns, they are unaware of any parts 'data plate' or 'data tag' on the inflation harness assemblies that identify the hose P/Ns after they are installed on a crew oxygen mask assembly.

We partially agree. We agree that the hose P/Ns are not required in the Applicability paragraph of this AD. We revised the applicability, paragraph (c), of this AD by removing the references to the installation hose and its P/Ns.

We disagree with removing the hose P/Ns from paragraphs (g)(2) and (3) of this AD. Although the commenter correctly points out that there is no data tag or data plate affixed to the hose, these P/Ns are useful to operators who can determine the hose P/N. Additionally, identifying the hose P/Ns in this AD is consistent with EASA AD 2014–0142, Revision 01, dated June 11, 2014.

Request To Increase the Compliance Time

United and AA requested, respectively, that we increase the compliance time from 24 months to 36 or to 48 months. The commenters reasoned that operators experienced supply issues when trying to comply with AD 2015–08–07 and many operators requested extensions to the compliance time. The supply situation was worsened because some oxygen mask regulator harnesses needed to be replaced because of illegible or non-existent part marking.

We partially agree. We agree to increase the compliance time to 36 months to ensure that suppliers can provide the parts because of the possibility there will be supply issues. Zodiac has not been able to determine inventory because they do not know the number of parts in use by U.S. operators. Increasing the compliance time by 12 months still meets the safety objectives of this AD. Our understanding from Zodiac is that they recommend hose replacement every 72 months, and given that all of the affected hoses were manufactured between 2008 and 2010, many of the affected hoses likely have been removed from service.

We disagree with increasing the compliance time to 48 months because 36 months is sufficient to comply with the required actions of this AD. Additionally, we do not want to extend, beyond a reasonable time, the period for which suspect parts can remain on aircraft. We revised paragraph (g)(1) of this AD to increase the compliance time to 36 months.

Request To Decrease the Compliance Time

The Airline Pilots Association International (ALPA) requested that the compliance time decrease from 24 months to 12 months. ALPA reasoned that greater than 40 months have passed since EASA AD 2014–0142, Revision 01, dated June 11, 2014, became effective. ALPA also noted that the required time to comply with the AD is one work-hour. Based on these factors the compliance time of this AD should be decreased to minimize risk.

We disagree. We note that operators may have difficulty obtaining replacement parts within a shortened compliance time. Also, the compliance time of 36 months after the effective date of this AD meets the safety objectives of this AD. We did not change this AD.

Request To Remove the P/Ns That Are Not Eligible for the ''W'' Marking

AA and United requested that we remove the reference to inflatable harness assembly P/Ns that have been re-marked with a ''W'' from the Installation Prohibition, of this AD. The commenters reasoned that adding a ''W'' applies only to oxygen mask regulator assemblies that have inflation harness assemblies, P/N MXH21–31, installed per Zodiac Aerospace SB MA_B_C_F10–35–260, dated October 19, 2012, or later revisions.

We agree. When an oxygen mask is modified per Zodiac SB MA_B_C_F10–35–260 and marked with a ''W,'' the P/N also changes to MXH21–31. Therefore, only P/N MXH21–31 is marked with a ''W.'' Paragraph (h)(3) of the NPRM incorrectly implied that P/N MXH20–1 and P/N MXH21–1 might also be marked with a ''W.'' We revised this AD by removing the reference to remarking P/Ns MXH20–1 and MXH21–1 with a ''W.''

Request To Include Inflatable Harness Assemblies Marked With an ''I''

AA requested that we include inflatable harness assembly marked with an ''I'' on the metal bushing to Required Actions, paragraph (g)(3), of this AD. AA reasoned that inflatable harness assemblies with an ''I'' on the metal bushings have been inspected and are not affected by this AD.

We agree. Based on paragraph 2.E. of Zodiac SB MC10–35–274, Revision 02, dated June 25, 2014, marking an ''I'' on the metal bushing of the inflatable harness indicates accomplishment of the SB. We have revised paragraph (g)(3) of this AD to note that inflatable harness assemblies with metal bushings marked with an ''I'' are not affected by this AD.

Request To Delay the Installation Prohibition Start Time

United requested that we add ''within 60 days of the effective date of this AD'' to the Installation Prohibition of this AD to provide more time before prohibiting the installation of the affected flight crew oxygen mask regulators. United reasoned that immediately restricting the installation of the affected regulators after the effective date of this AD is a logistical challenge and can be counterproductive. United is also concerned that material orders will be over abundantly placed to compensate for not knowing the modification status of their mask inventory. United believes that offsetting the start of a parts installation prohibition period would not significantly increase the risk.

We disagree. Given the increased compliance time allowed in paragraph (g)(1) of this AD, operators should have time to assess their inventory and make accurate purchases to replace affected parts. It would not be in the interest of safety to allow the period for which suspect parts could remain on the aircraft to continue for any period after this AD is published. We did not change this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014. The SB describes procedures for inspecting and replacing, if necessary, oxygen mask regulator inflatable harnesses. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects an unknown number of oxygen mask regulators installed on, but not limited to, various aircraft of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Date of manufacturing code review	0.1 work-hours × $85 per hour = $8.50	$0	$8.50
Hose replacement	0.3 work-hours × $85 per hour = $25.50	1,465.00	1,490.50

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.

We are 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness

Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

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 this AD:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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.

Adoption of 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 (AD):

2018–21–14 Zodiac Aerotechnics (formerly Intertechnique): Amendment 39–19472; Docket No. FAA–2017–0505; Product Identifier 2017–NE–15–AD.

(a) Effective Date

This AD is effective March 27, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Zodiac Aerotechnics (Zodiac) MC10 series crew oxygen mask regulators fitted with an inflatable harness assembly, part number (P/N) MXH20–1 or MXH21–1.

(d) Subject

Joint Aircraft System Component (JASC) Code 3510, Crew Oxygen System.

(e) Unsafe Condition

This AD was prompted by reports that certain silicon harness inflation hoses installed on certain flight crew quick donning mask harnesses (also known as 'comfort' harness) have shown an unusually high premature rupture rate. We are issuing this AD to prevent a harness rupture during a sudden depressurization event. The unsafe condition, if not addressed, could result in hypoxia and subsequent unconsciousness of the affected flight crew member, and consequent reduced control of the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Within 36 months after the effective date of this AD, determine the date of manufacturing (DMF) code of each inflatable harness assembly, P/N MXH20–1 and P/N MXH21–1, fitted to a flight crew oxygen mask regulator, having a P/N listed in Planning Information, paragraph 1.A.(1), of Zodiac Aerospace Service Bulletin (SB) MC10–35–274, Revision 02, dated June 25, 2014. A review of airplane delivery or maintenance records is acceptable to make the determination as specified in this paragraph, provided those records can be relied upon for that purpose, and the DMF of the inflatable harness assembly, P/N MXH20–1 or P/N MXH21–1, as applicable, can be conclusively identified from that review.

(2) If during the review required by paragraph (g)(1) of this AD, the DMF code of the inflatable harness assembly, P/N MXH20–1 or P/N MXH21–1, is found to be between 0850–S and 1051–S (inclusive): Within 36 months after the effective date of this AD, replace the harness inflation hose, P/N 445186 or P/N 445952, as applicable, with a part eligible for installation, or remove the inflatable harness assembly from the mask regulator and replace it with an inflatable harness assembly eligible for installation.

(3) An oxygen mask regulator equipped with an inflatable harness assembly, P/N MXH20–1 or P/N MXH21–1, having a DMF code of November 2008 (0845–S or 08/45–S) or earlier, and those with a DMF code of January 2011 (1101–S or 11/01–S) or later, are excluded from the requirements of this AD, provided it can be demonstrated that neither the inflatable harness assembly, nor the harness inflation hose, P/N 445186 or P/N 445952, as applicable, was replaced on that mask. An oxygen mask regulator with an inflatable harness assembly, P/N MXH20–1 or P/N MXH21–1, and with an inflatatable harness assembly with a metal bushing that has been marked with an ''I'' is also excluded from the requirements of this AD. A review of airplane delivery or maintenance records is acceptable to make the determination, provided those records can be relied upon for that purpose.

(h) Installation Prohibition

After the effective date of this AD, do not install on any airplane a flight crew oxygen mask regulator with a P/N listed in Planning Information, paragraph 1.A.(1), of Zodiac SB MC10–35–274, Revision 02, dated June 25, 2014, unless it meets the definition of a part eligible for installation in paragraph (i) of this AD.

(i) Definition

(1) After the effective date of this AD, a part eligible for installation is a crew oxygen mask regulator with:

(i) A P/N identified in Planning Information, paragraph 1.A.(1), of Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014, provided it has been determined that a P/N MXH20–1 or P/N MXH21–1 inflatable harness installed on that crew oxygen mask regulator has been inspected, and re-marked with an ''I'' as required by Material Information, paragraph 2.E. of Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014; or

(ii) a P/N identified in Planning Information, paragraph 1.A.(1), of Zodiac Aerospace SB MC10–35–274, Revision 02, dated June 25, 2014, provided it has been determined that an inflatable harness, P/N MXH21–31, is installed.

(2) [Reserved]

(j) Credit for Previous Actions

You may take credit for the inspection and replacement of the oxygen mask regulator harness inflation hose required by paragraphs (g)(1) and (2) of this AD, if you performed the inspection and replacement using the Accomplishment Instructions, paragraph 3, of Zodiac Aerospace SB MC10–35–274, Initial Issue, dated March 19, 2014, or Revision 01, dated April 18, 2014.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, FAA, Boston ACO Branch, Compliance and Airworthiness Division, 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 ACO Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD. You may email your request 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.

(l) Related Information

(1) For more information about this AD, contact Erin King, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone 781–238–7655; fax: 781–238–7199; email: *erin.king@faa.gov.*

(2) Refer to European Union Aviation Safety Agency AD 2014–0142, Revision 01, dated June 11, 2014, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0505.

(m) 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) Zodiac Aerospace Service Bulletin MC10–35–274, Revision 02, dated June 25, 2014.

(ii) [Reserved]

(3) For service information identified in this AD, contact Zodiac Aerotechnics, 61 rue Pierre Curie BP 1, 78373 Plaisir, CEDEX, France; phone: +33 1 6486 6964; email: *Christophe.besset@zodiacaerospace.com* or *Yann.laine@zodiacaerospace.com.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(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, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 13, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–02748 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0256; Airspace Docket No. 18–AEA–11]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace; Schenectady, NY, Ithaca, NY, and Albany, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet or more above the surface at Schenectady County Airport, Schenectady, NY, and Albany, NY by updating the geographic coordinates of this airport, Saratoga County Airport, Hunter NDB, and Cambridge VOR/DME. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D and E airspace of Schenectady County Airport, Schenectady, NY, and Ithaca Tompkins Regional Airport, Ithaca, NY. In addition, subsequent to publication, it was noted that the Cambridge VOR/DME was identified as VORTAC. This action corrects the error.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D airspace and Class E airspace at Schenectady County Airport, Schenectady, NY, Ithaca Tompkins Regional Airport, Ithaca, NY, and Saratoga County Airport, Albany, NY to support IFR operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 60378, November 26, 2018) for Docket No. FAA–2018–0256 to amend Class D airspace and Class E airspace at Schenectady County Airport, Schenectady, NY, Ithaca Tompkins Regional Airport, Ithaca, NY, and Saratoga County Airport, Albany, NY to support IFR operations at these airports.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, at Schenectady County Airport, Schenectady, NY and Class E airspace area extending upward from 700 feet or more above the surface at Albany, NY, by updating the geographic coordinates of Saratoga County Airport, Hunter NDB, and Cambridge VOR/DME to be in concert

with the FAA's aeronautical database. Also, an editorial change is be made replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D and E airspace legal descriptions for Schenectady County Airport, Schenectady, NY, and Ithaca Tompkins Regional Airport, Ithaca, NY. These changes enhance the safety and management of IFR operations at these airports. In addition, subsequent to publication, it was noted that the Cambridge VOR/DME was identified as VORTAC. This action corrects the error.

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. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Schenectady, NY [Amended]

Schenectady County Airport, NY
(Lat. 42°51′9″ N, long. 73°55′44″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.3-mile radius of Schenectady County Airport, excluding the portion that coincides with the Albany, NY, Class C airspace area. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

AEA NY D Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N, long. 76°27′31″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4-mile radius of Ithaca Tompkins Regional Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA NY E2 Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N, long. 76°27′3″ W)
Ithaca VOR/DME
(Lat. 42°29′42″ N, long. 76°27′35″ W)

That airspace extending upward from the surface within a 4-mile radius of Ithaca Tompkins Regional Airport and that airspace extending upward from the surface from the 4-mile radius of the airport to the 5.7-mile radius of the airport clockwise from the 329° bearing to the 081° bearing from the airport; that airspace from the 4-mile radius of the airport to the 8.7-mile radius of the airport extending clockwise from the 081° bearing to the 137° bearing from the airport; that airspace from the 4-mile radius of the airport to the 6.6-mile radius of the airport extending clockwise from the 137° bearing to the 170° bearing from the airport; that airspace from the 4-mile radius to the 5.7-mile radius of the airport extending clockwise from the 170° bearing to the 196° bearing from the airport, and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of the airport to 7.4 miles northwest of the Ithaca VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AEA NY E4 Schenectady, NY [Amended]

Schenectady County Airport, NY
(Lat. 42°51′9″ N, long. 73°55′44″ W)
Hunter NDB
(Lat. 42°51′15″ N, long. 73°56′01″ W)

That airspace extending upward from the surface within 2.5 miles each side of a 032° bearing from the Hunter NDB extending from the 4.3-mile radius of Schenectady County Airport to 7 miles northeast of the NDB.

AEA NY E4 Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N, long. 76°27′31″ W)
Ithaca VOR/DME
(Lat. 42°29′42″ N, long. 76°27′35″ W)

That airspace extending upward from the surface from the 4-mile radius of the Ithaca Tompkins Regional Airport to the 5.7-mile radius of the airport; clockwise from the 329° bearing to the 081° bearing from the airport; that airspace from the 4-mile radius of Ithaca Tompkins Regional Airport to the 8.7-mile radius of the airport extending clockwise from the 081° bearing to the 137° from the airport; that airspace from the 4-mile radius of Ithaca Tompkins Regional Airport; to the 6.6-mile radius of the airport, extending clockwise from the 137° bearing to the 170° bearing from the airport; that airspace from the 4-mile radius to the 5.7-mile radius of the Ithaca Tompkins Regional Airport, extending clockwise from the 170° bearing to the 196° bearing from the airport; and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of Ithaca Tompkins Regional Airport to 7.4 miles northwest of the Ithaca VOR/DME.

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

* * * * *

AEA NY E5 Albany, NY [Amended]

Albany VORTAC
(Lat. 42°44′50″ N, long. 73°48′11″ W)
Hunter NDB
(Lat. 42°51′15″ N, long. 73°56′01″ W)
Schenectady County Airport, NY
(Lat. 42°51′9″ N, long. 73°55′44″ W)
Saratoga County Airport, NY
(Lat. 43°03′03″ N, long. 73°51′42″ W)
Cambridge VOR/DME
(Lat. 42°59′39″ N, long. 73°20′38″ W)

That airspace extending upward from 700 feet above the surface within the area bounded by a point on the Albany VORTAC 007° radial 20 miles north of the VORTAC, thence clockwise along the arc of a 20-mile radius circle centered on the Albany VORTAC to its point of intersection with the

Albany VORTAC 037° radial, thence southwest along the Albany VORTAC 037° radial to a point 10.5 miles northeast of the VORTAC, thence clockwise along the arc of a 10.5-mile radius circle centered on the Albany VORTAC, to its point of intersection with a line 3.5 miles southeast of the Hunter NDB 207° bearing and within 3.5 miles each side of the 207° bearing from the Hunter NDB extending from the Hunter NDB to 15.3 miles southwest of the NDB and thence clockwise along the arc of the 7.9-mile radius circle centered on the Hunter NDB to its point of intersection with a line 1.8 miles south and parallel to the extended centerline of the Schenectady County Airport Runway 28, thence west along this parallel line to its point of intersection with the arc of a 11.3-mile radius circle centered on the Hunter NDB, thence clockwise along the arc of this 11.3-mile radius circle to its point of intersection with the 342° bearing from the Hunter NDB, thence north along a line bearing 356° from this point to the point of intersection of this line and the arc of a 16.6-mile radius circle centered on the Hunter NDB and thence clockwise along the arc of the 16.6-mile radius circle centered on the NDB to its point of intersection with the arc of a 20-mile radius circle centered on the Albany VORTAC and within 4.4 miles each side of the Albany VORTAC 082° radial extending from the Albany VORTAC to 16.1 miles east of the VORTAC and within a 6.4-mile radius of Saratoga County Airport and within 3.5 miles each side of the Cambridge VOR/DME 279° radial extending from 37.5 miles west of the Cambridge VOR/DME to the 6.4-mile radius area.

Issued in College Park, Georgia, on February 8, 2019.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–02687 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0998; Airspace Docket No. 18–AEA–19]

RIN 2120–AA66

Amendment of Class E Airspace; Corry, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Corry-Lawrence Airport, Corry, PA, to accommodate airspace reconfiguration due to the decommissioning of the Corry non-directional radio beacon and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also would update the geographic coordinates of this airport.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Corry-Lawrence Airport, Corry, PA, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 63449, December 10, 2018) for Docket No. FAA–2018–0998 to amend Class E airspace at Corry-Lawrence Airport, Corry, PA, to support IFR operations at this airport.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet or more above the surface within an 7.4-mile radius (increased from a 6.3-mile radius), with a southeast extension from the 7.4-mile radius to 11-miles of Corry-Lawrence Airport, Corry, PA, due to the decommissioning of the Corry NDB, and cancellation of the NDB approach. The airspace redesign would enhance the safety and management of IFR operations at the airport. Also, the geographic coordinates of the airport are amended to coincide with the FAA's aeronautical database.

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. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

AEA PA E5 Corry, PA [Amended]

Corry-Lawrence Airport, PA
(Lat. 41°54′27″ N, long. 79°38′28″ W)

That airspace extending upward from 700 feet above the surface within a 7.4- mile radius of Corry-Lawrence Airport, and within 4-miles each side of the 140° bearing from the airport, extending from the 7.4-mile radius to 11 miles southeast of the airport.

Issued in College Park, Georgia, on February 8, 2019.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–02688 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31239; Amdt. No. 3840]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 20, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 2019.

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

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

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

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on February 8, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Mar–19 ...	CA	Santa Rosa	Charles M Schulz—Sonoma County.	8/0432	1/28/19	RNAV (GPS) RWY 32, Amdt 1D.
28–Mar–19 ...	CA	El Monte	San Gabriel Valley	8/2453	1/28/19	VOR–A, Orig.
28–Mar–19 ...	KY	Lewisport	Hancock Co–Ron Lewis Field	8/5973	1/28/19	RNAV (GPS) RWY 23, Amdt 1A.
28–Mar–19 ...	WY	Newcastle	Mondell Field	8/8536	1/28/19	RNAV (GPS) RWY 32, Amdt 1.
28–Mar–19 ...	WY	Newcastle	Mondell Field	8/8538	1/28/19	RNAV (GPS) RWY 14, Amdt 1.
28–Mar–19 ...	CA	Santa Rosa	Charles M Schulz—Sonoma County.	8/8919	1/28/19	ILS OR LOC/DME RWY 32, Amdt 19A.
28–Mar–19 ...	CA	Santa Rosa	Charles M Schulz—Sonoma County.	8/8932	1/28/19	RNAV (GPS) RWY 2, Orig–D.
28–Mar–19 ...	CA	Santa Rosa	Charles M Schulz—Sonoma County.	8/8942	1/28/19	RNAV (GPS) RWY 14, Amdt 2A.
28–Mar–19 ...	TN	Knoxville	Knoxville Downtown Island	9/2426	1/28/19	RNAV (GPS) RWY 26, Orig–D.
28–Mar–19 ...	TN	Knoxville	Knoxville Downtown Island	9/2427	1/28/19	LOC RWY 26, Amdt 4B.
28–Mar–19 ...	NY	Farmingdale	Republic	9/3105	1/28/19	RNAV (RNP) Z RWY 14, Orig–A.
28–Mar–19 ...	NY	Farmingdale	Republic	9/3108	1/28/19	RNAV (GPS) RWY 32, Orig–A.
28–Mar–19 ...	NY	Farmingdale	Republic	9/3109	1/28/19	RNAV (GPS) RWY 19, Amdt 2D.
28–Mar–19 ...	NY	Farmingdale	Republic	9/3110	1/28/19	RNAV (GPS) RWY 1, Amdt 2C.
28–Mar–19 ...	NY	Farmingdale	Republic	9/3111	1/28/19	NDB RWY 1, Amdt 14C.
28–Mar–19 ...	NJ	Newark	Newark Liberty Intl	9/8682	2/1/19	RNAV (GPS) Z RWY 22L, Amdt 2B.
28–Mar–19 ...	NJ	Newark	Newark Liberty Intl	9/8690	2/1/19	RNAV (GPS) RWY 4L, Amdt 2D.
28–Mar–19 ...	FL	Wauchula	Wauchula Muni	9/8691	2/1/19	RNAV (GPS) RWY 18, Amdt 1B.
28–Mar–19 ...	FL	Wauchula	Wauchula Muni	9/8692	2/1/19	RNAV (GPS) RWY 36, Amdt 1B.
28–Mar–19 ...	ID	Blackfoot	Mccarley Fld	9/8913	2/5/19	RNAV (GPS)–B, Orig–A.
28–Mar–19 ...	ID	Blackfoot	Mccarley Fld	9/8914	2/5/19	RNAV (GPS)–A, Orig–A.
28–Mar–19 ...	ID	Blackfoot	Mccarley Fld	9/8915	2/5/19	VOR/DME–C, Orig-A.

[FR Doc. 2019–02678 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31238; Amdt. No. 3839]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 20, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 20, 2019.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97:

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 8, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 28 March 2019

Lewisport, KY, Hancock Co-Ron Lewis Field, RNAV (GPS) RWY 5, Amdt 1B
Pittsfield, ME, Pittsfield Muni, NDB RWY 36, Amdt 4E

Effective 25 April 2019

Homer, AK, Homer, Takeoff Minimums and Obstacle DP, Amdt 3A
Kiana, AK, Bob Baker Memorial, RNAV (GPS) RWY 6, Orig-D
Kiana, AK, Bob Baker Memorial, RNAV (GPS) RWY 24, Orig-B
Kotlik, AK, Kotlik, RNAV (GPS) RWY 2, Orig-E
Oneonta, AL, Robbins Field, RNAV (GPS) RWY 6, Orig-C
Oneonta, AL, Robbins Field, RNAV (GPS) RWY 24, Orig-A
Oneonta, AL, Robbins Field, Takeoff Minimums and Obstacle DP, Orig-B
Russellville, AL, Bill Pugh Field, RNAV (GPS) RWY 2, Orig-C
Carlisle, AR, Carlisle Muni, RNAV (GPS) RWY 9, Amdt 1A
Carlisle, AR, Carlisle Muni, RNAV (GPS) RWY 27, Orig-A
Carlisle, AR, Carlisle Muni, VOR RWY 9, Amdt 2D
Crossett, AR, Z M Jack Stell Field, RNAV (GPS) RWY 23, Orig-B
Walnut Ridge, AR, Walnut Ridge Rgnl, LOC RWY 18, Amdt 3C
Jacksonville, FL, Jacksonville Intl, ILS OR LOC RWY 26, Amdt 2B
Key West, FL, Key West Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Miami, FL, Miami Executive, ILS OR LOC RWY 9R, Amdt 11D
Miami, FL, Miami Executive, RNAV (GPS) RWY 9R, Amdt 2D
Miami, FL, Miami Executive, RNAV (GPS) RWY 27L, Amdt 2D
Jesup, GA, Jesup-Wayne County, NDB RWY 11, Amdt 2, CANCELED
Jesup, GA, Jesup-Wayne County, NDB RWY 29, Amdt 3, CANCELED
Macon, GA, Middle Georgia Rgnl, ILS OR LOC RWY 5, ILS RWY 5 SA CAT I, ILS RWY 5 SA CAT II, Amdt 3A
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 5, Amdt 3A
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 23, Amdt 2E
Shenandoah, IA, Shenandoah Muni, NDB RWY 4, Orig-D
Shenandoah, IA, Shenandoah Muni, RNAV (GPS) RWY 4, Orig-B
Sioux Center, IA, Sioux Center Muni, NDB RWY 18, Amdt 5, CANCELED
Waterloo, IA, Waterloo Rgnl, ILS OR LOC RWY 12, Amdt 10A
Peru, IL, Illinois Valley Rgnl-Walter A Duncan Field, LOC RWY 36, Amdt 4, CANCELED
Griffith, IN, Griffith-Merrillville, Takeoff Minimums and Obstacle DP, Amdt 4A
New Castle, IN, New Castle Henry County Marlatt Field, NDB RWY 10, Orig-B
New Castle, IN, New Castle Henry County Marlatt Field, RNAV (GPS) RWY 10, Orig-A
New Castle, IN, New Castle Henry County Marlatt Field, RNAV (GPS) RWY 28, Orig-A
New Castle, IN, New Castle Henry County Marlatt Field, Takeoff Minimums and Obstacle DP, Amdt 1A
South Bend, IN, South Bend Intl, RNAV (GPS) RWY 9R, Amdt 1A
Kingman, KS, Kingman Airport—Clyde Cessna Field, Takeoff Minimums and Obstacle DP, Orig-A
Rayville, LA, John H Hooks Jr Memorial, RNAV (GPS) RWY 18, Amdt 1B
Rayville, LA, John H Hooks Jr Memorial, RNAV (GPS) RWY 36, Amdt 2B
Shreveport, LA, Shreveport Downtown, RNAV (GPS) RWY 32, Orig-A
Falmouth, MA, Cape Cod Coast Guard Air Station, COPTER ILS Y OR LOC Y RWY 23, Amdt 2
Falmouth, MA, Cape Cod Coast Guard Air Station, ILS Z OR LOC Z RWY 23, Amdt 2
Falmouth, MA, Cape Cod Coast Guard Air Station, NDB RWY 23, Orig-A, CANCELED
Frederick, MD, Frederick Muni, VOR–A, Amdt 2D, CANCELED
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 22R (CLOSE PARALLEL), Amdt 1A
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Z RWY 22R (CLOSE PARALLEL), ILS PRM Z RWY 22R (CLOSE PARALLEL) SA CAT I, ILS PRM Z RWY 22R (CLOSE PARALLEL) SA CAT II, Orig-A
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y RWY 22R, Amdt 1A
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 22R, ILS Z RWY 22R SA CAT I, ILS Z RWY 22R SA CAT II, Amdt 4A
Drummond Island, MI, Drummond Island, RNAV (GPS) RWY 8, Orig-A
Drummond Island, MI, Drummond Island, RNAV (GPS) RWY 26, Orig-A
Sparta, MI, Paul C Miller-Sparta, RNAV (GPS) RWY 7, Orig-A
Sparta, MI, Paul C Miller-Sparta, RNAV (GPS) RWY 25, Orig-A
Sparta, MI, Paul C Miller-Sparta, VOR–A, Amdt 4A, CANCELED
International Falls, MN, Falls Intl-Einarson Field, ILS OR LOC RWY 31, Amdt 10C
New Ulm, MN, New Ulm Muni, RNAV (GPS) RWY 15, Orig-C
New Ulm, MN, New Ulm Muni, RNAV (GPS) RWY 33, Orig-B
Thief River Falls, MN, Thief River Falls Rgnl, ILS OR LOC RWY 31, Amdt 5A
Thief River Falls, MN, Thief River Falls Rgnl, VOR Y RWY 13, Amdt 9B
Thief River Falls, MN, Thief River Falls Rgnl, VOR Z RWY 13, Amdt 2D
Gideon, MO, Gideon Memorial, VOR RWY 15, Amdt 3A, CANCELED
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, VOR RWY 4, Amdt 16C
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, VOR RWY 22, Amdt 7C
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, VOR RWY 28, Amdt 8C
Greensboro, NC, Piedmont Triad Intl, ILS OR LOC RWY 5L, ILS RWY 5L CAT II, ILS RWY 5L CAT III, Orig-C
Creighton, NE, Creighton Muni, RNAV (GPS) RWY 13, Orig-C
Creighton, NE, Creighton Muni, RNAV (GPS) RWY 31, Orig-C
McCook, NE, Mc Cook Ben Nelson Rgnl, VOR RWY 30, Amdt 11C
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, RNAV (GPS) RWY 12, Amdt 1B
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, RNAV (GPS) RWY 30, Amdt 2B
North Platte, NE, North Platte Rgnl Airport Lee Bird Field, RNAV (GPS) RWY 35, Amdt 1B
Seward, NE, Seward Muni, Takeoff Minimums and Obstacle DP, Orig-B
Vincentown, NJ, Red Lion, RNAV (GPS) RWY 5, Orig-A, CANCELED
Vincentown, NJ, Red Lion, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELED
Vincentown, NJ, Red Lion, VOR–A, Amdt 6A, CANCELED
Truth or Consequences, NM, Truth or Consequences Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Lockport, NY, North Buffalo Suburban, RNAV (GPS) RWY 28, Orig, CANCELED
Lockport, NY, North Buffalo Suburban, Takeoff Minimums and Obstacle DP, Orig, CANCELED
New York, NY, John F Kennedy Intl, VOR RWY 4L, Amdt 1A
New York, NY, John F Kennedy Intl, VOR RWY 4R, Orig-A
New York, NY, LaGuardia, VOR–H, Amdt 3C, CANCELED
Schenectady, NY, Schenectady County, Takeoff Minimums and Obstacle DP, Amdt 6
Akron, OH, Akron Fulton Intl, NDB RWY 25, Amdt 15A

Cleveland, OH, Cuyahoga County, ILS OR LOC RWY 24, Amdt 16A
Columbus, OH, Rickenbacker Intl, NDB RWY 5R, Amdt 2A, CANCELED
Columbus, OH, Rickenbacker Intl, NDB RWY 23L, Amdt 2A, CANCELED
Youngstown-Warren, OH, Youngstown-Warren Rgnl, RADAR 1, Amdt 14
Tulsa, OK, Tulsa Intl, ILS OR LOC RWY 18L, Amdt 16A
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 8, Amdt 2B
Clarion, PA, Clarion County, VOR–A, Amdt 3A, CANCELED
Corry, PA, Corry-Lawrence, NDB RWY 14, Amdt 5, CANCELED
Franklin, PA, Venango Rgnl, VOR RWY 3, Amdt 5B, CANCELED
Harrisburg, PA, Harrisburg Intl, ILS OR LOC RWY 31, Amdt 1E
Hazleton, PA, Hazleton Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
West Chester, PA, Brandywine Rgnl, RNAV (GPS) RWY 9, Amdt 1A
West Chester, PA, Brandywine Rgnl, RNAV (GPS) RWY 27, Amdt 1A
West Chester, PA, Brandywine Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1A
West Chester, PA, Brandywine Rgnl, VOR–A, Amdt 4A
York, PA, York, RNAV (GPS) RWY 17, Amdt 2C
York, PA, York, RNAV (GPS) RWY 35, Amdt 1C
Greenville, SC, Greenville Downtown, ILS Y OR LOC Y RWY 1, Orig-B
Greenville, SC, Greenville Downtown, ILS Z OR LOC Z RWY 1, Amdt 30B
Orangeburg, SC, Orangeburg Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Pierre, SD, Pierre Rgnl, ILS OR LOC RWY 31, Amdt 12D
Albany, TX, Albany Muni, RNAV (GPS) RWY 17, Amdt 1C
Albany, TX, Albany Muni, RNAV (GPS) RWY 35, Amdt 1C
Baytown, TX, RWJ Airpark, Takeoff Minimums and Obstacle DP, Amdt 1A
Borger, TX, Hutchinson County, VOR RWY 17, Amdt 9, CANCELED
Borger, TX, Hutchinson County, VOR/DME RWY 35, Amdt 4A, CANCELED
Fredericksburg, TX, Gillespie County, Takeoff Minimums and Obstacle DP, Amdt 2
Galveston, TX, Scholes Intl at Galveston, ILS OR LOC RWY 14, Amdt 12C
Galveston, TX, Scholes Intl at Galveston, VOR RWY 14, Amdt 4C
Haskell, TX, Haskell Muni, RNAV (GPS)-A, Orig-A
Houston, TX, Conroe-North Houston Rgnl, ILS OR LOC RWY 14, Amdt 3C
Houston, TX, Conroe-North Houston Rgnl, NDB RWY 14, Amdt 3C
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8L, ILS RWY 8L SA CAT I, ILS RWY 8L CAT II, ILS RWY 8L CAT III, Amdt 4D
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 9, ILS RWY 9 SA CAT I, ILS RWY 9 SA CAT II, Amdt 10B
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26L, ILS RWY 26L SA CAT I, ILS RWY 26L CAT II, ILS RWY 26L CAT III, Amdt 21D
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26R, ILS RWY 26R SA CAT I, ILS RWY 26R CAT II, ILS RWY 26R CAT III, Amdt 4B
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 27, ILS RWY 27 SA CAT I, ILS RWY 27 CAT II, ILS RWY 27 CAT III, Amdt 11A
Houston, TX, Pearland Rgnl, VOR–B, Amdt 1A, CANCELED
Houston, TX, William P Hobby, ILS OR LOC RWY 4, ILS RWY 4 SA CAT I, ILS RWY 4 CAT II, ILS RWY 4 CAT III, Amdt 43A
Houston, TX, William P Hobby, ILS OR LOC RWY 13R, Amdt 12D
Houston, TX, William P Hobby, ILS OR LOC RWY 31L, Amdt 6D
La Porte, TX, La Porte Muni, VOR–A, Orig-B, CANCELED
Olney, TX, Olney Muni, RNAV (GPS) RWY 17, Amdt 1
Olney, TX, Olney Muni, RNAV (GPS) RWY 35, Amdt 1
Brookneal, VA, Brookneal/Campbell County, RNAV (GPS) RWY 24, Amdt 1B
Brookneal, VA, Brookneal/Campbell County, VOR–A, Amdt 2A
Norfolk, VA, Chesapeake Rgnl, VOR/DME RWY 23, Amdt 1A, CANCELED
Petersburg, VA, Dinwiddie County, Takeoff Minimums and Obstacle DP, Amdt 1
Burlington, WI, Burlington Muni, RNAV (GPS) RWY 11, Orig-C
Burlington, WI, Burlington Muni, RNAV (GPS) RWY 29, Amdt 1C
Park Falls, WI, Park Falls Muni, NDB RWY 36, Amdt 1A, CANCELED
Platteville, WI, Platteville Muni, RNAV (GPS) RWY 7, Orig-C
Platteville, WI, Platteville Muni, RNAV (GPS) RWY 25, Orig-A
Bluefield, WV, Mercer County, ILS OR LOC RWY 23, Amdt 15D

Rescinded: On February 7, 2019 (84 FR 2441), the FAA published an Amendment in Docket No. 31229, Amdt No. 3831, to Part 97 of the Federal Aviation Regulations under section 97.33. The following entry for College Station, TX, effective February 28, 2019, is hereby rescinded in its entirety:

College Station, TX, Easterwood Field, RNAV (GPS) RWY 29, Amdt 1B

[FR Doc. 2019–02679 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. FDA–2019–N–0142]

Medical Devices; Dental Devices; Classification of the Auto Titration Device for Oral Appliances

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the auto titration device for oral appliances into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the auto titration device for oral appliances' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective February 20, 2019. The classification was applicable on August 23, 2018.

FOR FURTHER INFORMATION CONTACT: Anita Belani, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G314, Silver Spring, MD 20993–0002, 301–796–3944, *Anita.Belani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the auto titration device for oral appliances as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate

by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

For this device, FDA issued an order on November 23, 2016, finding the MATRx plus not substantially equivalent to a predicate not subject to premarket approval application. Thus, the device remained in class III in accordance with section 513(f)(1) of the FD&C Act when we issued the order.

On December 21, 2017, Zephyr Sleep Technologies submitted a request for De Novo classification of the MATRx plus. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on August 23, 2018, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 872.5571. We have named the generic type of device auto titration device for oral appliances, and it is identified as a prescription home use device that determines a target position to be used for a final oral appliance for the reduction of snoring and mild to moderate obstructive sleep apnea.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—AUTO TITRATION DEVICE FOR ORAL APPLIANCES RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction	Biocompatibility evaluation.
Infection	Reprocessing validation and Labeling.
Intraoral/temporomandibular joint injury, irritation, or pain due to: • Use error • Algorithm-directed positioning • Interference with other devices • Device electrical failure	Clinical performance testing; Human factors assessment; Non-clinical performance testing; Software verification, validation, and hazard analysis; Electrical safety testing; Electromagnetic compatibility testing; and Wireless coexistence testing.
Incorrect titration level due to use error	Human factors assessment and Labeling.
Disruption of sleep	Labeling.
Temporary change in bite or dentition	Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, auto titration devices for oral appliances are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 872.5571 to subpart F to read as follows:

§ 872.5571 Auto titration device for oral appliances.

(a) *Identification.* An auto-titration device for oral appliances is a prescription home use device that determines a target position to be used for a final oral appliance for the reduction of snoring and mild to moderate obstructive sleep apnea.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must evaluate the following:

(i) Performance characteristics of the algorithm; and

(ii) All adverse events.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions for use, including the following:

(i) Validation of the closed loop algorithm;

(ii) Mechanical integrity over the expected use life;

(iii) Characterization of maximum force, distance, and speed of device movement; and

(iv) Movement accuracy of intraoral components.

(3) Performance testing must demonstrate the wireless compatibility, electrical safety, and electromagnetic compatibility of the device in its intended use environment.

(4) Software verification, validation, and hazard analysis must be performed.

(5) The patient-contacting components of the device must be demonstrated to be biocompatible.

(6) Performance data must validate the reprocessing instructions for any reusable components.

(7) Patient labeling must include:

(i) Information on device use, including placement of sensors and mouthpieces;

(ii) A description of all alarms; and

(iii) Instructions for reprocessing any reusable components.

(8) A human factors assessment must evaluate simulated use of the device in a home use setting.

Dated: February 14, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02824 Filed 2–19–19; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0596; FRL–9989–56–Region 10]

Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving and incorporating by reference into the Oregon State Implementation Plan (SIP) the Lane Regional Air Protection Agency's (LRAPA) revised outdoor burning rule submitted by the Oregon Department of Environmental Quality (ODEQ) on July 19, 2018. The revised rule, as it applies in Lane County, Oregon, clarifies terminology and provides additional controls of outdoor burning activities, reducing particulate emissions and strengthening the Oregon SIP. In addition, the EPA is approving but not incorporating by reference the enforcement procedures and civil penalties rule for LRAPA submitted by the ODEQ on September 25, 2018. The revised rule brings the enforcement procedures and civil penalties rule, as it applies in Lane County, into alignment with recent changes in Oregon State regulations.

DATES: This final rule is effective March 22, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0596. 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 or other information the disclosure of which 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 at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski at (360) 753–9081, or *duboiski.christi@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background
II. Response to Comment
III. Final Action
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VI. Statutory and Executive Order Reviews

I. Background

On July 19, 2018 and September 25, 2018, the ODEQ and LRAPA submitted revisions to the Oregon SIP as they apply in Lane County. On November 18, 2018, the EPA proposed to approve the LRAPA Title 47 outdoor burning rule which provided clarification and additional controls of outdoor burning activities in Lane County (83 FR 60836).

We also proposed to approve the Title 15 enforcement procedure and civil penalties rule, bringing LRAPA's rule into alignment with recently approved State rules. The public comment period for our proposed action ended on December 26, 2018. We received no adverse comments.

II. Response to Comment

We received one comment in support of the proposed approval of the LRAPA Title 47 outdoor burning rule and the Title 15 enforcement procedure and civil penalties rule. A full copy of the comment received is available in the docket for this final action.

III. Final Action

We are approving, and incorporating by reference into the Oregon SIP, the submitted revisions to the LRAPA Title 47 outdoor burning rule, Sections 001, 005, 010 (except the definition of ''nuisance''), 015 (except (1)(d) and (1)(h)), and 020 (except (3), (9)(i), and (10)). The revisions to Title 47 became State effective July 13, 2018 and were submitted to the EPA by the ODEQ and LRAPA on July 19, 2018. The submitted changes clarify terminology and provide additional controls of outdoor burning activities in Lane County, Oregon.

We are also approving, but not incorporating by reference, the submitted revisions to the LRAPA Title 15 enforcement procedures and civil penalty rule, Sections 001, 005, 015, 018, 020, 025, 030, 035, 040, 045, 055, 057, 060, and 065. The revisions to Title 15 became State effective on September 14, 2018 and were submitted by the ODEQ and LRAPA on September 25, 2018. The submitted changes align LRAPA's Title 15 rule with the ODEQ's Division 12 and provide LRAPA with authority needed for SIP approval.

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, we are finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully Federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Oregon Notice Provision

Oregon Revised Statute 468.126, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

VI. 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 Clean Air 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where 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 it 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 April 22, 2019. 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

[1] 62 FR 27968 (May 22, 1997).

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 4, 2019.

Chris Hladick,

Regional Administrator, Region 10.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. In § 52.1970:

■ a. In paragraph (c), table 4 is amended by revising the table heading, the heading for ''Title 47'' and the entries ''47–001'', ''47–005'', ''47–010'', ''47–015'', and ''47–020'' and adding a footnote number 1 to the end of the table.

■ b. In paragraph (e), remove the table ''Lane County Regional Air Pollution Authority Regulations, Approved But Not Incorporated by Reference'' and add in its place the table ''Lane Regional Air Protection Agency (LRAPA) Rules, Approved But Not Incorporated by Reference''.

The revisions and additions read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 4—EPA-APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON [1]

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Title 47—Rules for Outdoor Burning				
47–001	General Policy	7/13/2018	2/20/2019, [insert **Federal Register** citation].	
47–005	Exemptions from these Rules	7/13/2018	2/20/2019, [insert **Federal Register** citation].	
47–010	Definitions	7/13/2018	2/20/2019, [insert **Federal Register** citation].	Except the definition of ''nuisance''.
47–015	Outdoor Burning Requirements	7/13/2018	2/20/2019, [insert **Federal Register** citation].	Except (1)(d) and (1)(h).
47–020	Letter Permits	7/13/2018	2/20/2019, [insert **Federal Register** citation].	Except (3), (9)(i), and (10).
*	*	*	*	*

[1] EPA's approval is limited to the extent the provisions relate to section 110 of the Clean Air Act and determining compliance with and for purposes of implementation of SIP-approved requirements.

* * * * *

(e) * * *

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LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES, APPROVED BUT NOT INCORPORATED BY REFERENCE

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
Title 13—General Duties and Powers of Board and Director				
13–005	Authority of the Agency	3/31/2014	10/5/2018, 83 FR 50274	
13–010	Duties and Powers of the Board of Directors.	3/31/2014	10/5/2018, 83 FR 50274	
13–020	Duties and Function of the Director	3/31/2014	10/5/2018, 83 FR 50274	
13–025	Conflict of Interest	3/31/2014	10/5/2018, 83 FR 50274	
13–030	Advisory Committee	3/31/2014	10/5/2018, 83 FR 50274	
13–035	Public Records and Confidential Information.	3/31/2014	10/5/2018, 83 FR 50274	
Title 14—Rules of Practice and Procedure				
14–110	Definitions	3/23/2018	10/5/2018, 83 FR 50274	

LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES, APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
	Rulemaking			
14–115	Rulemaking Notice	3/23/2018	10/5/2018, 83 FR 50274	
14–120	Rulemaking Hearings and Process	3/23/2018	10/5/2018, 83 FR 50274	
14–125	Temporary Rules	3/23/2018	10/5/2018, 83 FR 50274	
14–130	Petition to Promulgate, Amend or Repeal Rule—Content of Petition, Filing of Petition.	3/23/2018	10/5/2018, 83 FR 50274	
14–135	Declaratory Rulings	3/23/2018	10/5/2018, 83 FR 50274	
	Contested Cases			
14–140	Contested Case Proceedings Generally.	3/23/2018	10/5/2018, 83 FR 50274	
14–145	Agency Representation by Environmental Law Specialist.	3/23/2018	10/5/2018, 83 FR 50274	
14–147	Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing.	3/23/2018	10/5/2018, 83 FR 50274	
14–150	Liability for the Acts of a Person's Employees.	3/23/2018	10/5/2018, 83 FR 50274	
14–155	Consolidation or Bifurcation of Contested Case Hearings.	3/23/2018	10/5/2018, 83 FR 50274	
14–160	Final Orders	3/23/2018	10/5/2018, 83 FR 50274	
14–165	Default Orders	3/23/2018	10/5/2018, 83 FR 50274	
14–170	Appeal to the Board	3/23/2018	10/5/2018, 83 FR 50274	
14–175	Power of the Director	3/23/2018	10/5/2018, 83 FR 50274	
14–185	Request for Stay Pending Judicial Review.	3/23/2018	10/5/2018, 83 FR 50274	
14–190	Request for Stay—Motion to Intervene	3/23/2018	10/5/2018, 83 FR 50274	
14–200	Request for Stay—Agency Determination.	3/23/2018	10/5/2018, 83 FR 50274	
14–205	Request for Stay—Time Frames	3/23/2018	10/5/2018, 83 FR 50274	
	Title 15—Enforcement Procedure and Civil Penalties			
15–001	Policy	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–003	Scope of Applicability	6/13/1995	8/3/2001, 66 FR 40616	
15–005	Definitions	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–010	Consolidation of Proceedings	6/13/1995	8/3/2001, 66 FR 40616	
15–015	Notice of Violation	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–018	Notice of Permit Violations (NPV) and Exceptions.	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–020	Enforcement Actions	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–025	Civil Penalty Schedule Matrices	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–030	Civil Penalty Determination Procedure (Mitigating and Aggravating Factors).	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–035	Written Notice of Civil Penalty Assessment—When Penalty Payable.	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–040	Compromise or Settlement of Civil Penalty by Director.	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–045	Stipulated Penalties	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–050	Additional Civil Penalties	6/13/1995	8/3/2001, 66 FR 40616	
15–055	Air Quality Classification of Violation	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–057	Determination of Violation Magnitude	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–060	Selected Magnitude Categories	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–065	Appeals	9/14/2018	2/20/2019, [insert **Federal Register** citation]	

LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES, APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
Title 31—Public Participation				
31–0070	Hearing Procedures	3/23/2018	10/5/2018, 83 FR 50274	

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[FR Doc. 2019–02545 Filed 2–19–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0508; FRL–9989–15–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State of Maryland's state implementation plan (SIP). The State of Maryland's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland will address RACT for oxides of nitrogen (NO_X) in another SIP submission. Maryland's VOC RACT submittal for the 2008 ozone NAAQS includes certification that previously adopted RACT controls in Maryland's SIP approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS were reviewed based on the currently available technically and economically feasible controls, and that they continue to represent RACT; a negative declaration for certain control technique guideline (CTG) categories that no facilities exist in the State for these certain categories; and adoption of new or more stringent RACT determinations where necessary. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on March 22, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0508. 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.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, (215) 814 2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 18, 2016, the Maryland Department of the Environment (MDE) submitted a revision to its SIP that addresses the VOC requirements of RACT for the 2008 8-hour ozone NAAQS.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_X in the presence of sunlight. In order to reduce ozone, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate and above ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NOx emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions greater than a certain ton per year threshold that varies based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b), 184(b) and 302. Sections 182(b)(2) and 182(f)(1) of the CAA require states with ozone nonattainment areas classified as moderate or higher to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA, and also on all major sources of VOC and NO_X emissions located in the area. EPA's CTGs provide guidance for RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs), primarily for NO_X source categories, which in contrast to the CTGs, only present a range of possible control options but do not identify any particular option as the recommendation for what can be RACT. Section 183(c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA establishes a single ozone transport region (OTR) comprising all or part of 12 eastern states and the District of Columbia,[2] including the entire State of Maryland. Section 184(b)(1)(B) and (2) of the CAA set forth requirements for states in the OTR. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally,

[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *see also* 44 FR 53761, 53762 (September 17, 1979).

[2] Only a portion of the Commonwealth of Virginia is included in the OTR.

section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) of VOCs shall be considered a major source and requires the implementation of major stationary source requirements in the OTR states as if the area were a moderate ozone nonattainment area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b) and 184(b).

B. Maryland's History

Maryland has been subject to the CAA RACT requirements because of previous ozone nonattainment designations. The Baltimore (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, MD, and Baltimore City, MD), Washington, DC (which includes Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, MD), and Philadelphia (which includes Cecil County, MD) nonattainment areas were designated as severe 1-hour ozone nonattainment areas. Kent and Queen Anne's Counties, MD were designated as a marginal 1-hour ozone nonattainment area. In addition, all of Maryland is included in the Ozone Transport Region (OTR). *See* CAA section 184(a). As a result, the entire State of Maryland is required to address the CAA RACT requirements by submitting to EPA a SIP revision that demonstrates how Maryland meets RACT requirements under the revised 2008 ozone standard. *See* CAA section 184(b). Since the early 1990s, Maryland has implemented numerous RACT controls throughout the State to meet the CAA's RACT requirements for the 1-hour and the 1997 8-hour ozone standards. Maryland also implemented controls necessary to meet the requirements of the NO_X SIP Call (40 CFR 51.121).

Under the 1997 8-hour ozone NAAQS, the Baltimore, Washington, DC, and Philadelphia areas were designated as serious nonattainment areas. Kent and Queen Anne's Counties, MD were designated as a marginal ozone nonattainment area. As discussed above, all of Maryland is in the OTR and therefore required to comply with the CAA RACT requirements. As a result, Maryland continued to be subject to the CAA RACT requirements. *See* 69 FR 23858, 23931 (April 30, 2004). Maryland revised and promulgated its RACT regulations and demonstrated that it complied with the 1997 CAA RACT requirements in a SIP revision approved by EPA on July 13, 2012 (77 FR 41278).

Under CAA section 109(d), EPA is required to periodically review and promulgate, as necessary, revisions to the NAAQS to continue to protect human health and the environment. On March 27, 2008, EPA revised the 1997 8-hour ozone standard by lowering the 8-hour standard to 0.075 ppm (73 FR 16436). On May 21, 2012, EPA finalized attainment/nonattainment designations for the 2008 8-hour ozone NAAQS (77 FR 30087). Under the 2008 8-hour ozone standard, EPA designated as nonattainment three areas that contain portions of Maryland. These nonattainment areas are: The Baltimore moderate nonattainment area; the Washington, DC marginal nonattainment area; and the Philadelphia marginal nonattainment area. All Maryland counties are part of the OTR, and as a result, the entire State of Maryland is required to address the CAA RACT requirements by submitting to EPA a SIP revision that demonstrates how Maryland meets RACT requirements under the revised 2008 ozone standard. Maryland is required to implement RACT for the 2008 ozone NAAQS on all VOC sources covered by a CTG issued by EPA, as well as all other major stationary sources located within the State. The RACT requirements under CAA sections 182 and 184 apply to all sources for which a CTG has been issued, and any other major stationary sources of VOC or NO_X Maryland has retained its major source thresholds at 25 tpy for VOC and NO_X sources in the Baltimore, Washington, DC, and Philadelphia severe 1-hour ozone nonattainment areas. Maryland has retained its major source thresholds at 50 tpy for VOC and 100 tpy for NO_X in all remaining Maryland counties, consistent with the CAA requirements for states in the OTR.

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each revised ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). 80 FR 12264. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements either (1) through a certification that previously adopted RACT controls in their SIP approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS, or (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT measures will occur when states have new stationary sources not covered by existing RACT measures, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Additionally, if there are no sources of VOC emissions covered by a CTG source category within the OTR state, then states are required to submit a negative declaration in lieu of, or in addition to, a certification.

II. Summary of SIP Revision and EPA Analysis

On August 18, 2016, Maryland submitted a SIP revision to address all of the VOC RACT requirements set forth by the CAA for the revised 2008 8-hour ozone NAAQS (the 2016 RACT Submission). Specifically, Maryland's 2016 RACT Submission includes: (1) A certification that for certain sources, previously-adopted VOC RACT controls in Maryland's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS, when considered in light of currently available technically and economically feasible controls, continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) the adoption of new or more stringent regulations or controls that represent RACT control levels for certain categories of sources; and (3) a negative declaration that certain sources covered by certain CTGs do not exist in Maryland.

Most of Maryland's Regulations, under Code of Maryland Regulations (COMAR) 26.11.06, 26.11.10, 26.11.11, 26.11.13, 26.11.14, 26.11.19 and 26.11.24, contain the VOC RACT controls that were implemented and approved into Maryland's SIP for the 1-hour and 1997 8-hour ozone NAAQS. Maryland also relies on COMAR 26.11.06.06—''General Emissions Standards, Prohibitions, and Restrictions—Volatile Organic Compounds,'' to achieve significant reductions from unique VOC sources. Maryland is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the

RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources of VOCs and for sources subject to CTGs. Maryland also submitted a negative declaration for the CTGs that have not been adopted because no facilities subject to these CTGs exist in Maryland and included Alternative Control Technologies (ACTs) in their review of applicable 2008 8-hour ozone RACT requirements. Maryland considered controls on other sources of VOCs not covered by a CTG and adopted rules whenever deemed to be reasonably available controls. Additionally, Maryland conducted a RACT analysis for each major Non-CTG stationary source of VOC. As previously discussed, Maryland retained its major source levels at 25 tpy for VOC sources in the Baltimore, Washington, DC and Philadelphia 1-hour severe nonattainment areas. All remaining counties are part of the OTR and therefore major source levels remain at 50 tpy for VOC. More detailed information on these provisions, as well as a detailed summary of EPA's review and rationale for approving these SIP revisions, can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2018–0508.

After evaluating the SIP revision submittal, EPA concluded that it meets the VOC RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184 of the CAA. Maryland's SIP revision satisfies the 2008 8-hour ozone NAAQS RACT requirements for VOCs through (1) certification that previously adopted RACT controls in Maryland's SIP that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS continue to represent RACT, in light of currently available technically and economically feasible controls; (2) a negative declaration for certain CTG source categories that no such sources exist in the State; and (3) adoption of new or more stringent RACT determinations when technically and economically feasible. EPA finds that Maryland's 2016 RACT Submission demonstrates that the State has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of VOC. EPA also finds that Maryland's SIP implements RACT with respect to all sources of VOCs covered by a CTG.

On August 3, 2018 (83 FR 38110), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland SIP revision. EPA received one relevant adverse comment on the NPR, which is addressed below.

III. Response to Comments

During the comment period, EPA received two anonymous comments on the rulemaking. One comment generally discussed wildfires and wildland fire management policy. EPA believes this comment is not germane to this rulemaking and therefore no further response is provided. The following is the comment pertinent to this rulemaking action, and EPA's response.

Comment #1: The anonymous commenter stated the following: ''It appears that this SIP revision is related to the SIP revision under docket number EPA–R03–OAR–2018–0153 (Maryland; Control of Emissions of Volatile Organic Compounds from Consumer Products)? Is what you are proposing to approve in that docket being reapproved in this revision? If so, if that revision is not final yet, how can you effectively say here that all the RACT requirements for the 2008 8-hour ozone NAAQS have been satisfied? I don't think this SIP revision is approvable before the consumer products one is finalized because you are not fully meeting RACT requirements yet.''

Response #1: EPA does not agree that this SIP revision (proposed for approval by EPA via docket number EPA–R03–OAR–2018–0508), addressing Maryland's compliance with the VOC RACT requirements for the 2008 ozone NAAQS, cannot be approved until Maryland's SIP revision for the control of VOCs from consumer products (proposed for approval by EPA via docket number EPA–R03–OAR–2018–0153) is approved. Also, EPA is not, as the commenter suggests, re-approving Maryland's SIP submission for control of VOCs from consumer products in this SIP action related to RACT. As explained below, these two SIP revisions are not related in a way that requires EPA to approve the consumer products SIP before the VOC RACT requirements for the 2008 ozone NAAQS SIP.

This final action (docket ending in 0508) related to Maryland's SIP revision for 2008 ozone VOC RACT is intended to satisfy the requirements of section 182(b)(2) and section 184 of the CAA. Section 182(b)(2) requires that each state containing a moderate ozone nonattainment area submit a SIP revision requiring RACT for (1) each category of VOC sources in the area covered by a CTG issued after November 15, 1990; (2) all VOC sources in the area covered by a CTG issued before November 15, 1990; and (3) all other major stationary sources of VOC that are located in the area. *See* section 182(b)(2)(A), (B), (C). As stated in the NPR for this action, EPA's implementation rule for the 2008 ozone NAAQS clarifies that states can certify that previously-adopted RACT controls approved by EPA into a SIP for the 1-hour and/or 1997 ozone NAAQS continue to represent RACT under the 2008 ozone standard. If there are no facilities or sources in the state covered by certain CTGs, states can submit a negative declaration that there are no such facilities or sources. 83 FR 38110 (August 3, 2018). Maryland's SIP revision at issue in docket number EPA–R03–OAR–2018–0508 addresses all of the section 182(b)(2) and 184 requirements. Table 2.3 of Maryland's SIP submittal (Docket ID EPA–R03–OAR–2018–0508–0002, p. 34) lists major stationary sources of VOCs in Maryland and evaluates whether controls applied to these sources still constitute RACT for the 2008 ozone NAAQS, as required by sections 182(b)(2)(C) and 184(b)(2). Table 2.1 of Maryland's SIP submittal (Id. at 7) lists those EPA CTGs for which Maryland has adopted State regulations to address the CTGs and which EPA has approved into Maryland's SIP. Finally, Section 2.2.1 lists those CTGs for which Maryland has submitted a negative declaration that no source covered by these CTGs exists in the State (Id. at 27). Table 2.1 and Section 2.2.1 address the requirements of CAA sections 182(b)(2)(A) and (B) and 184(b)(1)(B), and Maryland has certified that for the sources in Table 2.1, the existing Maryland regulations still constitute RACT for those sources. Thus, Maryland's SIP revision that EPA is taking action on here addresses all of the requirements of CAA section 182(b)(2) and 184 for the 2008 ozone NAAQS. Maryland's SIP revision at issue in docket number EPA–R03–OAR–2018–0153 is not meant to implement any RACT requirement for CTG-covered sources or major sources of VOCs under sections 182(b)(2) or 184. That SIP submittal, which seeks to adopt limits for VOCs in consumer products, is a SIP strengthening measure that is not required by section 182(b)(2) or 184 of the CAA. Indeed, EPA has not issued a CTG for consumer products. *See https://www.epa.gov/ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques,* for a list of all CTGs. Instead, EPA has issued a regulation governing VOC emissions from consumer products, entitled ''National Volatile Organic Compound Emission Standards for Consumer Products.'' 40 CFR part 59, subpart C (promulgated per

the authority in CAA section 183(e)). This regulation, which has nationwide applicability, requires that manufacturers, importers, and some distributors of certain consumer products ensure that the VOC content of those products do not exceed the regulated limits. *See* 40 CFR 59.201. States do not need to adopt 40 CFR part 59, subpart C, into their SIPs because the VOC limits already apply to these products in all states throughout the United States. RACT for VOCs and VOC emission standards for consumer products are managed by different regulatory structures established by the CAA. While these separate programs have a common goal of reducing VOC emissions, they are managed by EPA, and the states, in different ways, and they do not overlap in the manner suggested by the commenter. The new VOC limits adopted by Maryland that are under EPA consideration in docket number EPA–R03–OAR–2018–0153 are SIP strengthening measures, rather than RACT requirements under CAA section 182(b)(2) or 184. As noted in Maryland's public notice for the adoption of new VOC limits on consumer products, EPA's consumer products regulation in subpart C was last amended in 1998. 44:11 Md. R. 543 (May 26, 2017). Maryland's newly adopted consumer product VOC limits reflect more recent consumer product VOC limits adopted by the Ozone Transport Commission (OTC) in 2010 and 2014, of which Maryland is a member. Id. Indeed, a comparison of the limits in Tables 1 and 2 of 40 CFR part 59, subpart C, to the limits in COMAR 26.11.32.04, Table 1, shows that Maryland has chosen to adopt VOC limits for many more consumer products than EPA adopted in 40 CFR part 59, subpart C. Because there is no CTG for consumer products, Maryland did not need to consider RACT controls for consumer products in its SIP revision covering VOC RACT for the 2008 ozone standard (0508), and it is therefore not necessary for EPA to approve Maryland's SIP revision covering consumer products (0153) before approving the VOC RACT SIP (0508).

IV. Final Action

EPA is approving the State of Maryland's August 2016 SIP revision submittal on the basis that Maryland has met the RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184(b)(2) of the CAA.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant action under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2019. 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, which approves Maryland's 2008 8-hour ozone RACT SIP revision, may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 28, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for ''Reasonably Available Control Technology under 2008 8-hour ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Reasonably Available Control Technology under 2008 8-hour ozone National Ambient Air Quality Standard.	Statewide	08/18/2016	02/20/2019 [Insert **Federal Register** citation].	

[FR Doc. 2019–01881 Filed 2–19–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 08–7; FCC 18–178]

Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling; denial of petitions.

SUMMARY: In this Declaratory Ruling, the Commission finds that two forms of wireless messaging—Short Message Service (SMS) and Multimedia Messaging Service (MMS)—are information services, not telecommunications services under the Communications Act (the Act), and that they are not commercial mobile services nor their functional equivalent. In so doing, the Commission denies petitions filed by Twilio and Public Knowledge asking that the Commission subject text messaging services to common carrier regulation under Title II of the Act. This document concludes that classifying SMS and MMS wireless messaging services as information services will enable wireless providers to continue their efforts to protect American consumers from unwanted text messages and is therefore in the public interest.

DATES: The Declaratory Ruling was released and became effective on December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth McIntyre, Deputy Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–0668, email *elizabeth.mcintyre@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling, WT Docket No. 08–7; FCC 18–178, adopted December 12, 2018 and released December 13, 2018. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Copies of the Declaratory Ruling and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number 08–7. Additionally, the complete item is available on the Federal Communications Commission's website at *http://www.fcc.gov.*

I. Discussion

A. SMS and MMS Wireless Messaging Services Are Information Services

1. The Communications Act defines an ''information service'' as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. SMS and MMS wireless messaging services meet this definition. First, SMS and MMS wireless messaging services provide the capability for ''storing'' and ''retrieving'' information. When a user sends a message, the message is routed through servers on mobile networks. When a recipient device is unavailable to receive the message because it is turned off, the message will be stored at a messaging center in the provider's network until the recipient device is able to receive it. The messaging center will then forward the message to the recipient device when it becomes available. After the network delivers the message, the message is then stored on the user's device and will remain stored there until the user deletes it. This storage and retrieval capability is analogous to email service, which has been recognized under Commission precedent as an information service and similarly involves storage and retrieval functionality. Both email and SMS and MMS messaging services support asynchronous transfer of information allowing users to send messages without the need for the recipient of the message to be available to receive it.

2. The storage and retrieval functionality of SMS and MMS wireless messaging is an essential component of the services. It allows users to retrieve messages at any time and to interact with the stored information. The storage and retrieval functionality of SMS and MMS wireless messaging services also support users' expectation that the wireless messages they send will be delivered to their intended recipients even if the recipients' devices are turned off or are otherwise unavailable.

3. SMS and MMS wireless messaging services also involve the capability for ''acquiring'' and ''utilizing'' information. MMS also allows users to interact with data by watching and replaying videos and opening attachments. The Commission has found that services that provide this ability for subscribers to utilize and interact with stored information, even information provided by third parties, are information services.

4. In addition, SMS and MMS wireless messaging services involve ''transforming'' and ''processing'' capabilities. Messaging providers, for example, may change the form of transmitted information by breaking it into smaller segments before delivery to the recipient in order to conform to the character limits of SMS. They can also reformat multimedia messages before delivery to resolve the differences in the media processing capabilities of the sending and receiving devices. Commonly, wireless providers may compress or reduce the quality or size of photos and videos to optimize the viewing of a message on a particular receiving device. The Commission

agrees with commenters that without these capabilities, some messages could not be delivered to their recipients. Messages that are exchanged between email and messaging platforms may also be reformatted to ensure compatibility with each platform. In the case of an email sent as a text message, for instance, information such as an email's subject line is stripped out of the message and ''time, date, status reports, and call-back numbers'' are added to the message. Other texting services similarly involve information processing functionalities, such as the ability to program the service to generate automatic replies upon receipt of incoming messages.

5. In sum, SMS and MMS wireless messaging services offer the capability for ''storing'' and ''retrieving'' information, for ''acquiring'' and ''utilizing'' information, and for ''transforming'' and ''processing'' information. Accordingly, the services fit squarely within the statutory definition of an ''information service.''

6. The Commission has previously concluded that the question of whether an information service is ''offered'' should be evaluated with respect to the integrated finished product. Under this test, an integrated information service may include a transmission component inextricably intertwined with information processing capabilities. The Commission has historically looked at two factors to make this determination—consumer perception and the actual characteristics of the service. Consistent with this framework, the Commission examines whether wireless providers' SMS and MMS service offerings make available information processing capabilities inextricably intertwined with transmission. To make this determination, the Commission considers both how consumers perceive SMS and MMS wireless messaging services as well as how the services are provided as a factual matter. The Commission's analysis shows that both factors support the conclusion that SMS and MMS wireless messaging services inextricably intertwine the information processing capabilities described above with transmission.

7. The Commission begins by examining what consumers perceive to be the ''integrated finished product'' when they purchase wireless messaging service. Consumers perceive the offer of wireless messaging service to include more than mere transmission. They expect their wireless messaging service to enable the information processing functionalities that allow wireless messages to be stored and retrieved, and to allow users to send different types of media among different devices and messaging platforms. Indeed, evidence shows that consumers often prefer SMS and MMS wireless messaging services precisely because of these functionalities. For example, consumers view SMS and MMS messaging services as less disruptive and intrusive than voice calls because the storage and retrieval functionality of the services allows messages to be sent without anyone being there to receive them.

8. Turning next to how the service actually is provided, the Commission finds that, as a factual matter, SMS and MMS wireless messaging services are offered as a single, integrated information service. Although these services involve the transmission of information, the information processing functionalities associated with the services must be combined with transmission for the services to work. With SMS and MMS texting, the transmission of wireless messages is ''always and necessarily'' combined with data processing functionalities that enable storage and retrieval of messages and/or the transformation of information. In fact, SMS and MMS wireless messaging services are only offered along with these information processing capabilities. The information processing capabilities of messaging combined with transmission enable the asynchronous transfer of information and ensure that wireless messages can be exchanged and accessed across different platforms and devices.

9. Twilio contends that the information processing capabilities of wireless messaging service should be viewed as ''add-on'' or ''adjunct to basic'' services that are insufficient to make wireless messaging service an information service. Twilio's use of the term ''adjunct'' refers to pre-1996 Telecommunications Act precedent under which the Commission held that some capabilities ''may properly be associated with basic [common carrier] service without changing its nature.'' The 1996 Telecommunications Act does not use the term ''adjunct-to-basic,'' but rather includes a ''telecommunications management'' exception to the definition of information services, excluding from the definition those capabilities ''for the management, control, or operation of a telecommunication system or the management of a telecommunications service.'' The Commission has found that the telecommunications management exception is properly understood as ''directed at internal operations, not at services for customers or end users.'' The Commission finds that the information processing functionalities of SMS and MMS wireless messaging services are intended to benefit consumers and are not merely directed at internal operations. Consumers view the data processing functionalities that enable storage and transformation of information as essential elements of SMS and MMS wireless messaging services. The record shows that consumers often prefer texting to calling because of these features. The Commission has clarified that the scope of services viewed as falling within the telecommunications management exception to the information service definition is ''narrow'' and should focus only on those services that ''facilitat[e] bare transmission.'' The Commission has explained that, even where functionalities were useful in some way to providers in managing their networks, where those functionalities were designed primarily to be essential for end users, they would not fall within the telecommunications systems management exception. The Commission finds that even if the information processing functionalities of SMS and MMS wireless messaging services help wireless providers route wireless messages through their networks, those functionalities are nonetheless essential to end users and their ability to use wireless messaging services. Thus, consistent with Commission precedent, the Commission rejects the argument that those functionalities fall within the telecommunications management exception to the definition of information service.

10. Twilio also asserts that the Commission must find wireless messaging service to be a telecommunications service because ''the only offering that wireless carriers make to the public, with respect to messaging, is the ability of consumers to send and receive messages of the consumers' design and choosing.'' Public Knowledge *et al.* argue that wireless messaging service is different from other services the Commission has classified as information services because it does ''not rely on the internet and simply relay[s] the user's communications from one place to another, without change in the form or content of the communication.'' They also claim that wireless messaging service is intertwined with mobile voice service, and thus the two services should be regulated in the same manner. They note, for example, that ''most phones will recognize a phone number inside of a text message, and will allow

the owner to easily call that number or add it to his or her address book.'' These arguments are unpersuasive.

11. The definition of an information service is not limited to services that rely on the internet. Rather, what matters are the capabilities offered by the service, wireless messaging services feature storage, retrieval, and other information-processing capabilities. SMS and MMS wireless messaging services do much more than merely transmit ''information of the user's choosing, without change in the form or content of the information.'' Twilio points to providers' marketing materials to support its argument that what wireless providers are offering to consumers is only the ability to send and receive messages of their design and choosing, but those materials also discuss the information processing capabilities associated with wireless messaging service. While the specific description of texting services may differ from provider to provider, these examples provide evidence that information-processing capabilities are an integral part of the SMS and MMS wireless messaging services that wireless providers offer to consumers.

12. Moreover, the fact that SMS and MMS wireless messaging services are typically bundled with mobile voice services does not overcome the Commission's findings regarding the information service capabilities that these services provide and does not justify their classification as telecommunications services. For example, the fact that fixed broadband internet access service is often bundled with wireline voice service does not render fixed broadband internet access service a telecommunications service.

13. The Commission also rejects Twilio's argument that it must classify wireless messaging services as telecommunications services because the Commission has already ''held that a text message is a call under a portion of Title II'' (*i.e.,* under Section 227 of the Act). The Commission finds no inconsistency between its decision here and its actions in the Telephone Consumer Protection Act (TCPA) context, and reject Twilio's claim that its decision finding that the TCPA's prohibition on placing calls to wireless numbers applies to text as well as voice calls implicitly addressed the regulatory classification of wireless messaging services and requires that they be treated as telecommunications services. To the contrary, the Commission's decision merely clarified the meaning of the undefined term ''call'' in order to address the obligations that apply to telemarketers and other callers under the TCPA. That decision neither prohibits the Commission from finding that wireless messaging service is an information service, nor compels the Commission to conclude that messaging is a telecommunications service. Twilio's argument amounts to an assertion that if any provision in Title II of the Act applies to a service, then that service must be a telecommunications service. But a look at Title II easily belies that claim. For instance, although it is titled ''Common Carriers,'' Title II applies not only to common carriers or telecommunications carriers, but also to other entities such as electric utilities and equipment manufacturers. Section 224, for example, imposes requirements on electric utilities with respect to pole attachments. Section 255 requires telecommunications equipment manufacturers to provide equipment accessible for persons with disabilities. The TCPA provision itself generally prohibits the use of a facsimile machine to send unsolicited advertisements, but that does not constitute a determination that an individual's sending of a fax is a telecommunications service, just as the application to an individual's making ''text calls'' does not reflect a determination that wireless messaging is a telecommunications service. In any event, for purposes of regulatory treatment, there is a significant difference between being subject to Commission regulation and being subject to *per se* common carrier regulation. Only the latter requires classification as a telecommunications service. The Commission clarifies herein that SMS and MMS wireless messaging are Title I services, and thus, will not be subject to *per se* common carrier regulation.

14. Having determined that wireless messaging service is an information service, the Commission rejects requests that it use ancillary authority to apply common carrier regulation. As discussed below, application of the non-discrimination provisions of Section 202 of the Act or similar non-discrimination mandates under Title I would be contrary to the public interest.

B. SMS and MMS Wireless Messaging Services Are Not Commercial Mobile Services

15. The Commission finds that SMS and MMS wireless messaging services do not constitute ''interconnected services.'' Therefore, they do not meet the statutory definition of commercial mobile services, and need not be classified as telecommunications services on that basis. In particular, wireless messaging services do not ''give subscribers the capability to communicate to or receive communications from *all other users* on the public switched network.'' Instead, users of SMS and MMS wireless messaging services may only send wireless messages from devices able to message other platforms and to other users with wireless messaging-enabled devices. This leaves out a significant number of consumers who continue to use fixed line telephones that generally are not wireless messaging-enabled. The Commission's most recent data indicate, for instance, that there were 58 million fixed telephone lines in service as of December 2016. The Commission agrees with commenters that because SMS and MMS wireless messaging services do not provide the ability to reach all of these landline subscribers, they do not meet the definition of interconnected services.

16. Twilio argues that wireless messaging services nevertheless meet the definition of interconnected services because users have the capability to reach landline phones through the use of apps that allow landline phones to be text-enabled. The Commission finds this argument to be unavailing. First, Twilio's argument rests on the capabilities of a separate application or service that provides text to landline functionality. As the Commission has found previously, however, the definition of ''interconnected service'' focuses on the nature of the offered mobile service itself. The Commission agrees with commenters that the fact that users may be able to text landline numbers through the use of a separate application or service does not make SMS and MMS wireless messaging services themselves interconnected services. Moreover, even if text-to-landline service were not viewed as a separate service, text-to-landline service does not appear to be supported by all providers, and as a result, not all landline phones are able to send or receive SMS and MMS text messages. In addition, even in cases where text-to-landline service is available, the message sent to a landline number is typically sent as a digitized voice recording, and particularly for MMS messages, does not include any pictures or other media components that are regularly included in messages sent to other mobile devices.

17. That wireless subscribers are capable of receiving text messages from all other users on the public switched network that possess devices capable of transmitting text messages does not change the Commission's analysis. MetroPCS, for example, argues that ''[i]t is irrelevant whether landline phones

are capable of receiving SMS messages from wireless units since the 'or' in the definition of 'interconnected service' is met as soon as wireless devices have demonstrated capability to receive such messages from landline phones.'' This argument is unpersuasive, because regardless of the use of the word ''or,'' wireless messaging service does not provide users with the ability to receive communications from all users of landline phones. While there are, as described above, some services that provide text-to-landline functionality by translating wireless messages to voicemail, these services do not appear to be available from all providers and, where these services are not available, wireless messaging users are not able to receive wireless messages from landline phones. Furthermore, to the extent that landline phones are capable of sending and receiving wireless messages, the technologies that allow such communications transform wireless messages into a different communications medium and exhibit the characteristics of information services.

18. The Commission also disagrees with Twilio's claim that the Commission has already ruled that wireless messaging service is interconnected with the public switched network. In 2007, the Commission applied automatic roaming obligations to push-to-talk and SMS services based on its determination that doing so would serve the public interest because ''consumers expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network service areas.'' While the Commission noted that some SMS services were provided on an interconnected basis, the Commission did not address the question of whether SMS services were interconnected for purposes of addressing the regulatory classification of such services. To the contrary, the Commission specifically declined to address that issue, stating that ''nothing in this order should be construed as addressing regulatory classifications of push-to-talk, SMS or other data features/services.'' Accordingly, the Commission's detailed analysis and conclusion here that messaging does not meet the regulatory definition of ''interconnected service'' under the Commission's rules does not conflict with the Commission's 2007 *Roaming Report and Order.*

19. Further, the Commission finds that SMS and MMS wireless messaging services are not the functional equivalent of commercial mobile services. A mobile service that does not meet the definition of commercial mobile service is presumed to be a private mobile radio service unless the service is determined to be the functional equivalent of commercial mobile service. A variety of factors are evaluated to determine whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

20. The Commission sees no evidence that SMS and MMS wireless messaging services are closely substitutable with commercial mobile radio services, whether from a technical or practical point of view. Nor has the Commission seen any evidence that a change in the price of SMS and MMS wireless messaging service will cause a change in the price of commercial mobile radio service. The record does not indicate that customers would switch from wireless messaging service to a comparable commercial mobile service due to changes in price or service terms. Moreover, the fact that several providers bundle messaging with voice, on its own, is insufficient to enable the Commission to conduct a demand substitution test to overcome the presumption that wireless messaging is not a commercial mobile service but rather a private mobile service.

21. The technical characteristics and consumer use of wireless messaging service are also distinct from commercial mobile service. Wireless messaging service enables users to exchange messages containing text and multimedia content for viewing immediately or at a later time and conduct internet searches. Though recipients of SMS and MMS messaging may respond immediately, they are not required to be present at the time the message is sent. In contrast, a commercial mobile service call requires the caller and recipient to be available at the same time for the phone conversation.

22. Marketing materials highlight the distinctions between these two services, suggesting under the last prong of the functional equivalence test that wireless providers target separate markets for commercial mobile service and SMS/MMS. For example, in promoting its business messaging service, AT&T states that consumers ''can find calls intrusive.'' And as a business wireless messaging firm notes, compared to voice service, wireless messaging is ''a more reliable way of communication because it may be stored and read at any moment later, it's clear and cannot be misunderstood,'' but that voice is important in a variety of situations and ''never drops off the market.'' This market information, in addition to the fact that wireless messaging is typically bundled with voice as a complementary service, indicates that firms recognize that consumers highly value the unique characteristics of each service and do not consider these services as substitutes for each other. Accordingly, under the functional equivalence standard, the Commission finds that wireless messaging today is not the functional equivalent of commercial mobile service.

23. Lastly, the Commission's conclusion that SMS and MMS wireless messaging services meet the definition of information service also compels it to conclude that they are not commercial mobile services. Consistent with the Commission's previous findings in the context of mobile broadband internet access service, classifying messaging as a commercial mobile service under Section 332 and also as an information service under Section 3 of the Act could lead to ''contradictory and absurd results.'' Such an interpretation would create an internal contradiction in the statutory framework because Section 332 would require that a service provider be treated as a common carrier with respect to its provision of wireless messaging service, while Section 3 would prohibit the application of common carrier regulation to the wireless messaging service provider. Construing the commercial mobile service definition to exclude SMS and MMS wireless messaging services avoids this contradiction and is consistent with the Act's overall intent to allow information services to develop free from common carrier regulations.

C. Classifying SMS and MMS Wireless Messaging Services as Information Services Is in the Public Interest

24. The Commission's classification of SMS and MMS wireless messaging services as information services is not only fully consistent with the Communications Act, it is also independently supported by public policy considerations. As discussed below, such a classification will empower wireless providers to continue their efforts to protect consumers from unwanted text messages. By contrast, classifying SMS and MMS as Title II

telecommunications services would harm those efforts and open the floodgates to unwanted messages—drowning consumers in spam at precisely the moment when their tolerance for such messages is at an all-time low.

25. In the absence of a Commission assertion of Title II regulation, wireless providers have employed effective methods to protect consumers from unwanted messages and thereby make wireless messaging a trusted and reliable form of communication for millions of Americans. The Commission rejects the request of Twilio to upend this status quo by classifying SMS and MMS as telecommunications services subject to common carriage obligations under Title II. Applying such regulation, or only non-discrimination obligations, to SMS and MMS, either directly or through an exercise of ancillary jurisdiction, would inhibit wireless providers' ability to continue protecting consumers from unwanted messages. In particular, in the context of voice service, under Title II, the Commission has generally found call blocking by providers to be unlawful, and typically permits it only in specific, well-defined circumstances. The record shows that, as a result, wireless providers would be limited in their efforts to prevent spam and unwanted messages from reaching end users under Title II regulation, and consequently, consumers would be bombarded with unwanted text messages.

26. The record also demonstrates that applying Title II regulation and thereby curbing wireless providers' ability to use anti-spam and other protections would open SMS and MMS to more spam attacks. Indeed, continuing to empower wireless providers to protect consumers from spam and other unwanted messages is imperative in light of the fact that the growth and popularity of SMS and MMS wireless messaging services have made them an attractive target for bad actors and spammers. For example, according to Fact Atlas, SMS spam volumes have grown in proportion with overall SMS traffic volumes. Symantec also explains that ''[a]s more users rely on their mobile devices, more spam, scams, and threats are tailored to these devices,'' and ''SMS and other mobile messaging technologies are readily being used as a means to deliver all kinds of scam campaigns, such as adult content, rogue pharmacy, phishing and banking scams, payday loan spam, fake gifts.'' Additionally, two dozen state attorneys general have expressed concerns about the threat that scams via text messaging pose to consumers or provided state residents with tips on how best to avoid such scams.

27. For these reasons, state attorneys general and other commenters argue that the Commission should not allow wireless messaging services to become plagued by unwanted messages in the same way that voice service is flooded with unwanted robocalls. The Commission agrees. Last year, Americans received approximately 30 billion robocalls, and for the first five months of 2018, more than 16 billion robocalls have already been placed. And the Commission receives over 200,000 complaints about unwanted calls each year—around 60% of all of the complaints that the Commission receives from consumers. The Commission's classification of SMS and MMS as information services will enable wireless providers to continue taking steps to ensure that wireless messaging remains relatively spam-free, and therefore a trusted form of communication for millions of Americans, while a contrary classification would open messaging to many of the same scams and nuisances that plague consumers of voice services today.

28. At the same time, the Commission finds no reason to believe that consumers will not receive the messages they do want as a result of this Declaratory Ruling. First, wireless providers have every incentive to ensure the delivery of messages that consumers want to receive in order to guarantee the integrity of this essential service and to retain consumer loyalty. Consumers have a wealth of options for wireless messaging service; if wireless providers do not ensure that messages consumers want are delivered, they risk losing those customers to other wireless providers or to over-the-top applications. In the occasional event that such measures have been found to block messages that may be wanted, wireless providers have responded quickly.

29. Some commenters assert that under Title I, providers of SMS and MMS wireless messaging services might act anticompetitively, blocking messages in order to protect their services against competitors. But this concern is not borne out in the marketplace; the Commission has not imposed Title II or other non-discrimination obligations, and yet under current industry practices, competing services are thriving. In cases in which wireless providers are alleged to be perpetrating unfair or deceptive acts or practices, the U.S. Federal Trade Commission has broad authority to police such conduct and protect consumers. Similarly, if wireless providers act in an anticompetitive manner, their actions can be challenged under the general antitrust laws.

30. Commenters make a number of other policy arguments for classifying wireless messaging as a Title II service, none of which the Commission finds persuasive. The Commission finds such classification unnecessary to protect individuals with disabilities, enforce the First Amendment, protect public safety and health, or foster innovation.

31. Beyond empowering wireless providers to continue protecting consumers from unwanted text messages, the Commission's classification decision today promotes innovation and investment by removing the regulatory uncertainty caused by the threat of Title II classification of SMS and MMS wireless messaging services. The Commission has recognized that ''regulatory burdens and uncertainty, such as those inherent in Title II, can deter investment by regulated entities.'' Even the threat of Title II regulation can have significant deleterious effects on investment. In contrast, regulatory certainty and a ''minimal regulatory environment . . . promote[ ] investment and innovation in a competitive market.'' The Commission's classification decision today not only avoids the potential pitfalls of a Title II regime, it is also a recognition that utility-style regulation is not suitable for dynamic technological industries, such as SMS and MMS wireless messaging services, that constantly undergo major developments, because such regulation inherently restricts the activities in which the regulated industry can engage. As the Commission recognized in the *Vonage Order,* innovative services flourish when they are ''subject to the Commission's long-standing national policy of nonregulation of information services.''

32. Additionally, the Commission notes that its finding that SMS and MMS wireless messaging services are information services does not affect the general applicability of the spectrum allocation and licensing provisions of Title III and the Commission's rules to this service. These provisions and rules continue to apply because the service is using radio spectrum. Title III empowers the Commission to prescribe the nature of the service to be rendered and to make such rules and regulations and prescribe such restrictions and conditions as may be necessary to carry out the provisions of the Act. Application of provisions governing access to and use of spectrum (and their corresponding Commission rules) is not affected by whether the service using

the spectrum is classified as a telecommunications or information service under the Act. Further, nothing in this Declaratory Ruling should be construed as modifying any spectrum use authorizations and service rule obligations arising out of license conditions or rules governing unlicensed use of the spectrum.

33. Finally, the Commission notes that nothing in this Declaratory Ruling impacts the Commission's ability to maintain and update its text-to-911 rules. The Commission has previously found that Sections 301, 303, 307, 309 and 316 support its authority in this context, and they continue to do so. The Commission has also relied on the Twenty-First Century Communications and Video Accessibility Act (CVAA) to provide authority in this area, as well as its authority to protect the safety of life and property by safeguarding the public's ability to access 911 services. More recently, Congress specifically directed the Commission to consider improvements to 911 across multiple technological platforms when it enacted Kari's Law Act of 2017 and Section 506 of RAY BAUM'S Act. Similarly, the Commission's authority regarding wireless emergency alerts (WEAs) remains unchanged by this Declaratory Ruling.

II. Ordering Clauses

34. Accordingly, *it is ordered*, that pursuant to sections 1–4, and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, and 303, and section 1.2 of the Commission's rules, 47 CFR 1.2, the Declaratory Ruling *is adopted.*

35. *It is further ordered*, pursuant to sections 1–4, and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, and 303, and section 1.2 of the Commission's rules, that the Petition for Declaratory Ruling filed by Public Knowledge et al. in WT Docket No. 08–7 on December 11, 2007, *is denied.*

36. *It is further ordered*, pursuant to sections 1–4, and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, and 303, and section 1.2 of the Commission's rules, that the Petition for Expedited Declaratory Ruling filed by Twilio Inc. in WT Docket No. 08–7 on August 26, 2015, *is denied.*

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02762 Filed 2–19–19; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 84, No. 34

Wednesday, February 20, 2019

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 RESERVE SYSTEM

12 CFR Parts 238 and 252

[Docket No. R–1648; RIN 7100–AF37]

Regulations LL and YY; Amendments to the Company-Run and Supervisory Stress Test Rules; Correction

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the end of the comment period for a notice of proposed rulemaking (NPR) published in the **Federal Register** of February 14, 2019, that would modify company-run stress testing requirements to conform to section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).

DATES: The comment period for the NPR published on February 14, 2019, at 84 FR 4002, is corrected. Comments must be received by March 21, 2019.

FOR FURTHER INFORMATION CONTACT: Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Julie Anthony, Senior Counsel, (202) 475–6682, or Asad Kudiya, Counsel, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Additional contact information is identified in the NPR (*See* 84 FR 4002 (February 14, 2019). Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board published in the **Federal Register** of February 14, 2019, a notice of proposed rulemaking that would modify company-run stress testing requirements to conform to section 401 of EGRRCPA. However, the comment period for that NPR was published to end five days after publication in the **Federal Register**, which is contrary to the 30-day notice period intended by the Board. This document corrects that error and extends the comment period to end on March 21, 2019.

Correction

In proposed rule, FR Doc. 2019–00484, published on February 14, 2019, 84 FR 4002 make the following correction:

1. On page 4002, column one, the **DATES** section is corrected to read as follows:

DATES: Comments on the notice of proposed rulemaking published on February 14, 2019, (84 FR 4002) that would modify company-run stress testing requirements to conform with Economic Growth, Regulatory Relief, and Consumer Protection Act must be received by March 21, 2019.

By order of the Board of Governors of the Federal Reserve System, February 15, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–02976 Filed 2–15–19; 4:15 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0039; Airspace Docket No. 19–AGL–4]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Connersville and Richmond, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Mettel Field Airport, Connersville, IN, and Richmond Municipal Airport, Richmond, IN. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Richmond VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airports would also be updated to coincide with the FAA's aeronautic database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before April 8, 2019.

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–2019–0039; Airspace Docket No. 19–AGL–4, at the beginning of your comments. You may also submit comments through the internet at *http://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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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 amend Class E airspace extending upward from 700 feet above the surface at Mettel Field Airport, Connersville, IN, and Richmond Municipal Airport, Richmond, IN, to support IFR 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–2019–0039; Airspace Docket No. 19–AGL–4.'' 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile radius (reduced from a 7.6-mile radius) of Mettel Field Airport, Connersville, IN; updating the geographic coordinates of the airport to coincide with the FAA's aeronautic database; and removing the city for the airport name and the exclusion verbiage to comply with FAA Order 7400.2L, Procedures for Handling Airspace Matters; and

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (reduced from a 7-mile radius) of Richmond Municipal Airport, Richmond, IN; and updating the geographic coordinates of Richmond Municipal Airport and Reid Hospital Heliport, Richmond, IN, to coincide with the FAA's aeronautic database.

This action is necessary due to an airspace review caused by the decommissioning of the Richmond VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, 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 Connersville, IN [Amended]

Mettel Field Airport, IN

(Lat. 39°41′54″ N, long. 85°07′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Mettel Field Airport.

* * * * *

AGL IN E5 Richmond, IN [Amended]

Richmond Municipal Airport, IN
(Lat. 39°45′22″ N, long. 84°50′34″ W)
Reid Hospital Heliport, IN, Point In Space Coordinates
(Lat. 39°51′52″ N, long. 84°52′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Richmond Municipal Airport, and within a 6-mile radius of the Point in Space serving Reid Hospital Heliport.

Issued in Fort Worth, Texas, on February 11, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–02690 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0034; Airspace Docket No. 19–ASW–1]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Alpine, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Alpine-Casparis Municipal Airport, Alpine, TX. This action is necessary due to the decommissioning of the Brewster County non-directional radio beacon (NDB), and cancellation of the NDB approach, and would enhance the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at this airport. Additionally, the geographic coordinates are being updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before April 8, 2019.

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 1–800–647–5527. You must identify FAA Docket No. FAA–2019–0034; Airspace Docket No. 19–ASW–1, at the beginning of your comments. You may also submit comments through the internet at *http://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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: John Witucki, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Alpine-Casparis Municipal Airport, Alpine, TX, 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–2019–0034; Airspace Docket No. 19–ASW–1.'' 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed

in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class E airspace extending upward from 700 feet above the surface within 6.6 mile radius of the Alpine-Casparis Municipal Airport and within 2 miles each side of the 023° bearing from the Alpine-Casparis Municipal Airport extending from the 6.6-mile radius to 10.5 miles northeast of the airport. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to the decommissioning of the Brewster County NDB, and cancellation of the NDB approach, which would enhance the safety and management of the standard instrument approach.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

ASW TX E5 Alpine, TX [Amended]
Alpine-Casparis Municipal Airport, TX
(Lat. 30°23′03″ N, long. 103°41′01″ W)

That airspace extending upward from 700 feet above the surface within 6.6 mile radius of the Alpine-Casparis Municipal Airport and within 2.0 miles each side of the 023° bearing from the Alpine-Casparis Municipal Airport extending from the 6.6-mile radius to 10.5 miles northeast of the airport.

Issued in Fort Worth, TX, on February 13, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–02676 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0038; Airspace Docket No. 19–ACE–3]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Sibley, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Sibley Municipal Airport in Sibley, IA. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Sibley non-directional radio beacon (NDB).

DATES: Comments must be received on or before April 8, 2019.

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–2019–0038; Airspace Docket No. 19–ACE–3, at the beginning of your comments. You may also submit comments through the internet at *http://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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: John Witucki, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Sibley Municipal Airport, in support of standard instrument approach procedures for IFR operations at the 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–2019–0038; Airspace Docket No. 19–ACE–3.'' 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 *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius (increased from 6.0 miles) of Sibley Municipal Airport. This action is necessary due to the decommissioning of the Sibley NDB. This action would enhance safety and the management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, 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 proposed 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, 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 Sibley, IA [Amended]

Sibley Municipal Airport, IA
(Lat. 43°22′10″ N, long 94°45′35″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Sibley Municipal Airport.

Issued in Fort Worth, Texas, on February 13, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–02677 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0040; Airspace Docket No. 19–AGL–5]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Hamilton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Butler County Regional Airport-Hogan Field, Hamilton, OH. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Richmond VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before April 8, 2019.

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–2019–0040; Airspace Docket No. 19–AGL–5, at the beginning of your comments. You may also submit comments through the internet at *http://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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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 amend Class E airspace extending upward from 700 feet above the surface at Butler County Regional Airport-Hogan Field, Hamilton, OH, to support IFR 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–2019–0040; Airspace Docket No. 19–AGL–5.'' 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 http://www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at*http://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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (reduced from a 6.9-mile radius) of Butler County Regional Airport-Hogan Field, Hamilton, OH.

This action is necessary due to an airspace review caused by the decommissioning of the Richmond VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which

is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

AGL OH E5 Hamilton, OH [Amended]

Butler County Regional Airport-Hogan Field, OH

(Lat. 39°21′50″ N, long. 84°31′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Butler County Regional Airport-Hogan Field.

Issued in Fort Worth, Texas, on February 11, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–02689 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0748; FRL–9989–41–Region 1]

Air Plan Approval; Massachusetts; Infrastructure State Implementation Plan Requirements for the 2012 $PM_{2.5}$ NAAQS; Transport Provisions for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts for the infrastructure requirements for the 2012 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS), including the interstate transport requirements. We are proposing findings of failure to submit for the prevention of significant deterioration (PSD) requirements of infrastructure SIPs for the 2012 $PM_{2.5}$ NAAQS. We are also proposing several actions related to infrastructure SIP requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS, including approvals for previously unaddressed elements and converting certain previous conditional approvals to full approval. We are also proposing to convert to full approvals previous conditional approvals for the 1997 and 2008 ozone, 2008 lead, 2010 sulfur dioxide, and 2010 nitrogen dioxide NAAQS. Finally, EPA is proposing to approve five new or amended definitions regarding the NAAQS and Particulate Matter and a state Executive Order regarding consultation by state agencies with local governments. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before March 22, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0748 at *https://www.regulations.gov,* or via email to *simcox.alison@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 *http://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 Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. 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.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912, tel. (617) 918–1684; *simcox.alison@epa.gov.*

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

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I. Background and Purpose

A. What Massachusetts SIP submissions does this rulemaking address?

This rulemaking addresses a February 9, 2018, submission from the Massachusetts Department of Environmental Protection (MassDEP) regarding the infrastructure SIP requirements of the CAA for the 2012 fine particle ($PM_{2.5}$) [1] National Ambient Air Quality Standard (NAAQS). The February 2018 submission also includes the interstate transport requirements for the 2006 and 2012 $PM_{2.5}$ NAAQS. In addition, this rulemaking addresses the interstate transport requirements for the 1997 $PM_{2.5}$ NAAQS, which the Commonwealth submitted on January 31, 2008. Under sections 110(a)(1) and (2) of the CAA, States are required to provide infrastructure SIP submissions to ensure that State SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.

Finally, this rulemaking addresses a portion of a Massachusetts SIP submission dated May 14, 2018, which includes five new or amended definitions in 310 Code of Massachusetts Regulations (CMR) 7.00.

B. What is the scope of this rulemaking?

EPA is acting on a February 2018 submission from MassDEP that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 $PM_{2.5}$ NAAQS. This submission also addresses the ''Good Neighbor'' or interstate transport requirements for infrastructure SIPs for the 2006 and 2012 $PM_{2.5}$ NAAQS. In addition, EPA is acting on a January 31, 2008, submission from the Commonwealth that addresses interstate transport requirements for the 1997 $PM_{2.5}$ NAAQS.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[2] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for factual compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[3] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. What guidance is EPA using to evaluate these SIP submissions?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 memorandum). EPA has issued additional guidance documents and memoranda, including a September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 memorandum), and a September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 memorandum).[4]

With respect to the ''Good Neighbor'' or interstate transport requirements for infrastructure SIPs, the most recent relevant EPA guidance is a memorandum published on March 17, 2016, entitled ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (2016 memorandum). The 2016 memorandum describes EPA's past approach to addressing interstate transport and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of the CAA section 110(a)(2)(D)(i)(I) ''Good Neighbor'' provision requirements in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS.

III. EPA's Review

EPA is soliciting comment on our evaluation of Massachusetts' infrastructure SIP submissions as presented in this notice of proposed

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as ''fine'' particles.

[2] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Massachusetts' infrastructure SIP to address the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. 81 FR 93627 (December 21, 2016).

[3] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (August 30, 2018).

[4] These memoranda and other referenced guidance documents and memoranda are included in the docket for this action.

rulemaking. Massachusetts' February 9, 2018, submission includes a detailed list of Massachusetts Laws and previously SIP-approved Air Quality Regulations to show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2012 $PM_{2.5}$ NAAQS. The following review evaluates the Commonwealth's submission in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[5] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether Massachusetts' SIP has basic structural provisions for the implementation of the NAAQS.

Massachusetts General Law (M.G.L.) c. 21A, § 8, *Executive Office of Energy and Environmental Affairs Organization of Departments; powers, duties and functions,* creates and sets forth the powers and duties of the Department of Environmental Protection (MassDEP) within the Executive Office of Energy and Environmental Affairs. In addition, M.G.L. c.111, §§ 142A through 142N, which, collectively, are referred to as the *Massachusetts Pollution Control Laws,* provide MassDEP with broad authority to prevent pollution or contamination of the atmosphere and to prescribe and establish appropriate regulations. Furthermore, M.G.L. c.21A, § 18, *Permit applications and compliance assurance fees; timeline action schedules; regulations,* authorizes MassDEP to establish fees applicable to the regulatory programs it administers. MassDEP's February 9, 2018, infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS included a request to add M.G.L. c.21A, § 18 to the Massachusetts SIP. In a letter dated February 6, 2019, the state withdrew this request.

MassDEP has adopted numerous regulations within the Code of Massachusetts Regulations (CMR) in furtherance of the objectives set out by these statutes, including 310 CMR 4.00, *Timely Action & Fee Schedule Regulations,* and 310 CMR 7.00, *Air Pollution Control Regulations.* For example, many SIP-approved State air quality regulations within 310 CMR 7.00 provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters that satisfy the requirements of the CAA section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS, including but not limited to, 7.06, *Visible Emissions;* 7.07, *Open Burning;* 7.08, *Incinerators;* and 7.29, *Emission Standards for Power Plants.*

On May 14, 2018, MassDEP submitted a SIP revision to EPA that included new or amended definitions in 310 CMR 7.00, *Air Pollution Control: Definitions.* Specifically, these definitions include: *National Ambient Air Quality Standards (NAAQS)* or *Federal Ambient Air Quality Standards, PM_{10}* or *Particulate Matter 10, PM_{10} Emissions, $PM_{2.5}$* or *Particulate Matter 2.5,* and *$PM_{2.5}$ Emissions.* In a final rule dated December 21, 2016 (81 FR 93627), EPA conditionally approved several Massachusetts infrastructure submissions[6] for section 110(a)(2)(A) because the SIP-approved version of 310 CMR 7.00 did not contain a definition for ''NAAQS,'' resulting in uncertainty as to which version of the NAAQS the term incorporated. However, the definition of ''NAAQS'' added to 310 CMR 7.00 clarifies that references to NAAQS are to all current NAAQS, including the 2012 $PM_{2.5}$ NAAQS. Therefore, we are proposing to approve this definition plus the additional definitions given above related to Particulate Matter included in MassDEP's May 2018 submission. This action will convert the former conditional approvals[7] of this section to a full approval. The new definitions also address two earlier conditional approvals of this section for the 1997 and 2006 $PM_{2.5}$ NAAQS. 77 FR 63228 (October 16, 2012). Therefore, EPA proposes that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS and proposes to convert to full approval conditional approvals of this section for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing State provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make such data available to EPA upon request. Each year, States submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the State: (i) Monitors air quality at appropriate locations throughout the State using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan. Under MGL c.111, §§ 142B to 142D, MassDEP operates an air-monitoring network. EPA approved Massachusetts' most recent Annual Air Monitoring Network Plan (ANP) for $PM_{2.5}$ on May 9, 2018. This approval excluded one monitor in Chelmsford that, under 40 CFR 58.10(a)(iv), was required to be operational by January 1, 2015, but was not operating. However, this monitor began operating in June 2018, measuring $PM_{2.5}$, ozone, and NO_2. In addition to having an adequate air-monitoring network, MassDEP populates AQS with air quality monitoring data in a timely manner and provides EPA with prior notification when considering a change to its monitoring network or plan.

EPA proposes that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(B) for the 2012 $PM_{2.5}$ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each State's submission addressing the infrastructure SIP requirements of

[5] See, for example, EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964, 67034 (November 12, 2008).

[6] The submissions were for the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS.

[7] *See supra,* note 6.

section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

MassDEP staffs and implements an enforcement program pursuant to authorities provided within the following laws: M.G.L. c.111, § 2C, *Pollution violations; orders of department of environmental protection,* which authorizes MassDEP to issue orders enforcing pollution control regulations generally; M.G.L. c.111, §§ 142A through 142O, *Massachusetts Pollution Control Laws,* which, among other things, more specifically authorize MassDEP to adopt regulations to control air pollution, enforce such regulations, and issue penalties for non-compliance; and, M.G.L. c.21A, § 16, *Civil Administrative Penalties,* which provides additional authorizations for MassDEP to assess penalties for failure to comply with the Commonwealth's air pollution control laws and regulations. Moreover, SIP-approved regulations, such as 310 CMR 7.02(12)(e) and (f), provide a program for the enforcement of SIP measures. Accordingly, EPA proposes that Massachusetts meets the enforcement of SIP measures requirements of section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: Preconstruction Program for Major Sources and Major Modifications

Sub-element 2 of section 110(a)(2)(C) requires that States provide for the regulation of modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, including a program to meet PSD and NNSR requirements. PSD applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable, regarding the relevant NAAQS, and NNSR requires similar actions in nonattainment areas.

Massachusetts does not have an approved State PSD program and has made no submittals addressing the PSD sub-element of section 110(a)(2)(C). The Commonwealth has long been subject to a Federal Implementation Plan (FIP), however, and has implemented and enforced the federal PSD program through a delegation agreement. *See* 76 FR 31241 (May 31, 2011). Accordingly, EPA proposes a finding of failure to submit with respect to the PSD-related requirements of this sub-element for the 2012 $PM_{2.5}$ NAAQS.[8] *See* CAA section 110(c)(1). This finding, however, does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the deficiency is addressed by the FIP already in place. Moreover, the Commonwealth is not subject to mandatory sanctions solely as a result of this finding because the SIP submittal deficiencies are neither with respect to a sub-element that is required under part D nor in response to a SIP call under section 110(k)(5) of the Act.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA's most recent approval of the Commonwealth's minor NSR program occurred on April 5, 1995 (60 FR 17226). Since this date, Massachusetts and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 $PM_{2.5}$ NAAQS.

In summary, we are proposing to find that, for the 2012 $PM_{2.5}$ NAAQS, Massachusetts meets the enforcement-related aspects of Section 110(a)(2)(C) for sub-element 1 and the preconstruction permitting requirements for minor sources for sub-element 3. However, pursuant to section 110(c)(1), we are proposing to find that the Commonwealth has failed to make the required submissions related to major source preconstruction permitting (sub-element 2) for the 2012 $PM_{2.5}$ NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which States must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Significant contribution to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

Section 110(a)(2)(D)(i)(I) of the CAA requires a SIP to prohibit any emissions activity in the State that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any downwind State. EPA commonly refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the ''Good Neighbor'' or ''transport'' provisions of the CAA. This rulemaking proposes action on the portion of Massachusetts' February 2018 SIP submission that addresses the prong 1 and 2 requirements with respect to the 2006 and 2012 $PM_{2.5}$ NAAQS. On December 26, 2017, EPA issued a finding that Massachusetts had failed to submit a SIP addressing the transport provisions (including prongs 1 and 2) for the 2012 $PM_{2.5}$ NAAQS. *See* 82 FR 60870. The February 2018 submittal resolves this issue.

EPA has developed a consistent framework for addressing the prong 1 and 2 interstate-transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind States contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for States identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind State from significantly

[8] EPA has previously issued findings of failure to submit infrastructure SIPs addressing the PSD-related requirements of section 110(a)(2) for the 1997 ozone NAAQS, 73 FR 16205 (March 27, 2008), the 2008 ozone NAAQS, 78 FR 2882 (January 15, 2013), the 2008 Pb NAAQS, 78 FR 12961 (February 26, 2013), and the 2010 NO_2 and 2010 SO_2 NAAQS, 81 FR 93627 (December 21, 2016). Massachusetts has made no additional submissions to address the PSD-related requirements for these NAAQS since those previous findings.

contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for States that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), which addressed both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 ozone standard. *See* 76 FR 48208 (August 8, 2011).

EPA's analysis for CSAPR, conducted consistent with the four-step framework, included air-quality modeling that evaluated the impacts of 38 eastern States on identified receptors in the eastern United States. EPA indicated that, for step 2 of the framework, States with impacts on downwind receptors that are below the contribution threshold of 1% of the relevant NAAQS would not be considered to significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS, and would, therefore, not be included in CSAPR. *See* 76 FR 48220. EPA further indicated that such States could rely on EPA's analysis for CSAPR as technical support to demonstrate that their existing or future interstate transport SIP submittals are adequate to address the transport requirements of 110(a)(2)(D)(i)(I) with regard to the relevant NAAQS. *Id.*

In addition, as noted above, on March 17, 2016, EPA released the 2016 memorandum to provide information to States as they develop SIPs addressing the Good Neighbor provision as it pertains to the 2012 $PM_{2.5}$ NAAQS. Consistent with step 1 of the framework, the 2016 memorandum provides projected future-year annual $PM_{2.5}$ design values for monitors throughout the country based on quality-assured and certified ambient-monitoring data and recent air-quality modeling and explains the methodology used to develop these projected design values. The memorandum also describes how the projected values can be used to help determine which monitors should be further evaluated to potentially address if emissions from other States significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at these monitoring sites. The 2016 memorandum explained that the pertinent year for evaluating air quality for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS is 2021, the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data included 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the memorandum suggests approaches States might use to interpolate $PM_{2.5}$ values at sites in 2021.

For all, but one, monitoring sites in the eastern United States, the modeling data provided in the 2016 memorandum showed that monitors were expected to both attain and maintain the 2012 $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results project that this one monitor, the Liberty monitor, (ID number 420030064), located in Allegheny County, Pennsylvania, will be above the 2012 annual $PM_{2.5}$ NAAQS in 2017, but only under the model's maximum projected conditions, which are used in EPA's interstate transport framework to identify maintenance receptors. The Liberty monitor (along with all the other Allegheny County monitors) is projected to both attain and maintain the NAAQS in 2025. The 2016 memorandum suggests that under such a condition (again, where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025, but not in 2017), further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (which, again, is the attainment deadline for moderate $PM_{2.5}$ areas). The memorandum also indicates that for certain States with incomplete ambient monitoring data, additional information including the latest available data, should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions. This rulemaking considers these analyses for Massachusetts, as well as additional analysis conducted by EPA during review of Massachusetts' submittal.

To develop the projected values presented in the memorandum, EPA used the results of nationwide photochemical air-quality modeling that it recently performed to support several rulemakings related to the ozone NAAQS. Base-year modeling was performed for 2011. Future-year modeling was performed for 2017 to support the proposed CSAPR Update for the 2008 Ozone NAAQS. *See* 80 FR 75705 (December 3, 2015). Future-year modeling was also performed for 2025 to support the Regulatory Impact Assessment of the final 2015 Ozone NAAQS.[9] The outputs from these model runs included hourly concentrations of $PM_{2.5}$ that were used in conjunction with measured data to project annual average $PM_{2.5}$ design values for 2017 and 2025. Areas that were designated as moderate $PM_{2.5}$ nonattainment areas for the 2012 annual $PM_{2.5}$ NAAQS in 2014 must attain the NAAQS by December 31, 2021, or as expeditiously as practicable. Although neither the available 2017 nor 2025 future-year modeling data correspond directly to the future-year attainment deadline for moderate $PM_{2.5}$ nonattainment areas, EPA believes that the modeling information is still helpful for identifying potential nonattainment and maintenance receptors in the 2017 through 2021 period. Assessing downwind $PM_{2.5}$ air-quality problems based on estimates of air-quality concentrations in a future year aligned with the relevant attainment deadline is consistent with the instructions from the United States Court of Appeals for the District of Columbia Circuit in *North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008), that upwind emission reductions should be harmonized, to the extent possible, with the attainment deadlines for downwind areas.

Massachusetts' Submissions for Prongs 1 and 2

The submissions addressed herein pertain to the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS. Below is a brief history of these NAAQS.

On July 18, 1997, EPA promulgated a new NAAQS for $PM_{2.5}$ (62 FR 38652). This new NAAQS established a primary (health-based) annual standard of 15 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006 (71 FR 61144), EPA revised the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ and retained the annual $PM_{2.5}$ standard at a level of 15 $\mu g/m^3$. On January 15, 2013 (78 FR 3086), EPA revised the annual $PM_{2.5}$ NAAQS from 15 $\mu g/m^3$ to 12 $\mu g/m^3$ and retained the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$.

On January 31, 2008, MassDEP submitted an infrastructure SIP for the 1997 Ozone NAAQS that included interstate transport provisions addressing prongs 1 and 2 with respect to the 1997 $PM_{2.5}$ NAAQS (*i.e.,* ''transport SIP''). This transport SIP relied in part on EPA's analysis

[9] *See* 2015 ozone NAAQS RIA at: *www3.epa.gov/ttnecas1/docs/20151001ria.pdf.*

performed for the Clean Air Interstate Rule (CAIR) rulemaking as well as EPA's newer NONROAD model (version 2005a, February 2006) for modeling non-road motor vehicles in Massachusetts to conclude that the State will not significantly contribute to nonattainment or interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS in any downwind area. CAIR was replaced by CSAPR, which is discussed above, as of January 1, 2015.

On February 9, 2018, MassDEP submitted an infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS that included interstate transport provisions addressing prongs 1 and 2 with respect to the 2006 and 2012 $PM_{2.5}$ NAAQS. These transport SIPs relied in part on EPA's analysis performed for the CSAPR rulemaking to conclude that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2006 or 2012 $PM_{2.5}$ NAAQS in any downwind area.

EPA analyzed Massachusetts' January 2008 and February 2018 submittals to determine whether they fully addressed the prong 1 and 2 transport provisions with respect to the 1997, 2006 and 2012 $PM_{2.5}$ NAAQS. As discussed below, EPA concludes that emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors (NO_X and SO_2) in Massachusetts will not significantly contribute to nonattainment or interfere with maintenance of the 1997, 2006 or 2012 $PM_{2.5}$ NAAQS in any other State.

Analysis of Massachusetts' Submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS

With respect to the 1997 and 2006 $PM_{2.5}$ NAAQS, EPA's analysis in the 2011 CSAPR rulemaking determined that Massachusetts' impact to all downwind receptors would be below the 1% contribution threshold for both NAAQS for the annual (*i.e.,* 0.15 μg/m^3) and 24-hour standards (*i.e.,* 0.65 μg/m^3 (1997) and 0.35 μg/m^3 (2006)), indicating that the Commonwealth will not significantly contribute to nonattainment or interfere with maintenance for the 1997 or 2006 $PM_{2.5}$ NAAQS in any downwind State. *See* 76 FR at 48240, 48242. As noted above, EPA previously determined that States can rely on EPA's CSAPR analysis for the 1997 and 2006 $PM_{2.5}$ NAAQS as technical support to demonstrate that their existing or future interstate transport SIP submittals are adequate to address the transport requirements of 110(a)(2)(D)(i)(I) regarding the relevant NAAQS. Accordingly, as EPA's CSAPR analysis concluded that Massachusetts will not significantly contribute to nonattainment or interfere with maintenance of the 1997 or 2006 $PM_{2.5}$ NAAQS, we propose to approve Massachusetts' January 31, 2008, and February 9, 2018, SIP submissions for prongs 1 and 2 for the 1997 and 2006 $PM_{2.5}$ NAAQS.

Analysis of Massachusetts' Submission for the 2012 $PM_{2.5}$ NAAQS

As noted above, the modeling discussed in EPA's 2016 memorandum identified one potential maintenance receptor for the 2012 $PM_{2.5}$ NAAQS at the Liberty monitor (ID number 420030064), located in Allegheny County. The memorandum also identified certain States with incomplete ambient monitoring data as areas that may require further analysis to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

While developing the 2011 CSAPR rulemaking, EPA modeled the impacts of all 38 eastern States in its modeling domain on fine particulate matter concentrations at downwind receptors in other States in the 2012 analysis year to evaluate the contribution of upwind States on downwind States with respect to the 1997 and 2006 $PM_{2.5}$. Although the modeling was not conducted for purposes of analyzing upwind States' impacts on downwind receptors with respect to the 2012 $PM_{2.5}$ NAAQS, the contribution analysis for the 1997 and 2006 standards can be informative for evaluating Massachusetts' compliance with the Good Neighbor provision for the 2012 standard.

This CSAPR modeling showed that Massachusetts had a very small impact (0.008 μg/m^3) on the Liberty monitor in Allegheny County, which is the only out-of-State monitor that may be a nonattainment or maintenance receptor in 2021. Although EPA has not proposed a specific threshold for evaluating the 2012 $PM_{2.5}$ NAAQS, EPA notes that Massachusetts' impact on the Liberty monitor is far below the threshold of 1% for the annual 2012 $PM_{2.5}$ NAAQS (*i.e.,* 0.12 μg/m^3) that EPA previously used to evaluate the contribution of upwind States to downwind air-quality monitors. (A spreadsheet showing CSAPR contributions for ozone and $PM_{2.5}$ is included in docket EPA–HQ–OAR–2009–0491–4228.) Therefore, even if the Liberty monitor were considered a receptor for purposes of transport, the EPA proposes to conclude that Massachusetts will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 $PM_{2.5}$ NAAQS at that monitor.

In addition, the Liberty monitor is already close to attaining the 2012 $PM_{2.5}$ NAAQS and expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to measured $PM_{2.5}$ levels. All monitors in Allegheny County have a regional component, with the Liberty monitor most strongly influenced by local sources. This is confirmed by the fact that annual average measured concentrations at the Liberty monitor have consistently been 2–4 μg/m^3 higher than other monitors in Allegheny County.

Specifically, previous CSAPR modeling showed that regional emissions from upwind States, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and States upwind from the Greater Pittsburgh region. Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015 and 2017 because of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs). Projected power plant closures and additional emissions controls in Pennsylvania and upwind States will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books Federal and State regulations such as the federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources. *See* proposed and final approval of the Ohio Infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS on December 7, 2017 (82 FR 57689) and on February 2, 2018 (83 FR 4845), respectively.

In addition to regional emissions reductions and plant closures, additional local reductions to both direct $PM_{2.5}$ and SO_2 emissions are expected to occur and should contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO_2 NAAQS SIP.[10] Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower $PM_{2.5}$ precursor emissions in the immediate

[10] *www.achd.net/air/pubs/SIPs/SO2_2010_NAAQS_SIP_9-14-2017.pdf.*

future. The Allegheny SO_2 SIP also projects lower SO_2 emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021. *See* proposed approval and final approval of the Ohio Infrastructure SIP, December 7, 2017 (82 FR 57689) and February 2, 2018 (83 FR 4845).

As noted in the 2016 memorandum, several States have had recent data-quality issues identified as part of the $PM_{2.5}$ designations process. In particular, some ambient $PM_{2.5}$ data for some periods between 2009 and 2013 in Florida, Illinois, Idaho, Tennessee, and Kentucky did not meet all data-quality requirements under 40 CFR part 50, appendix L. The lack of data means that the relevant areas in those States could potentially be in nonattainment or be maintenance receptors in 2021. However, as mentioned above, EPA's analysis for the 2011 CSAPR rulemaking with respect to the 2006 $PM_{2.5}$ NAAQS determined that Massachusetts' impact to all these downwind receptors would be well below the 1% contribution threshold for this NAAQS. That conclusion informs the analysis of Massachusetts' contributions for purposes of the 2012 $PM_{2.5}$ NAAQS as well. Given this, and the fact, discussed below, that the Commonwealth's $PM_{2.5}$ design values for all ambient monitors have declined since the 2005–2007 period, EPA concludes that it is highly unlikely that Massachusetts significantly contributes to nonattainment or interferes with maintenance of the 2012 $PM_{2.5}$ NAAQS in areas with data-quality issues.[11]

Information in Massachusetts' February 2018 SIP submission corroborates EPA's proposed conclusion that Massachusetts' SIP meets its Good Neighbor obligations. The State's technical analysis in that submission includes graphs showing downward trends in the maximum 24-hour and annual $PM_{2.5}$ design values for all six New England States and New York since 2007. It also includes results of EPA's CSAPR and CSAPR update modeling. This technical analysis is supported by additional indications that the State's air quality is improving and that emissions are falling, including certified 24-hour and annual $PM_{2.5}$ monitor values recorded through 2017 and preliminary 2018 results.[12] Specifically, since 1999, the highest value satisfying minimum data completion criteria for the 24-hour $PM_{2.5}$ standard was 48 μg/m³ in Pittsfield in Berkshire County (1999) and in Lynn in Essex County (2003). The highest value satisfying minimum data completion criteria for the annual $PM_{2.5}$ standard was 15.3 μg/m³ in Boston in Suffolk County (1999). However, since 2008, all monitors in the Commonwealth have been below the 2012 $PM_{2.5}$ NAAQS.

In addition, as reported in EPA's Clean Air Markets Program database, actual ozone-season NO_X emissions from EGUs in Massachusetts from 2009 through 2017 fell from 2,403.5 to 878.5 tons, almost one-third of what it was.

Second, Massachusetts' sources are well-controlled. Massachusetts' 2018 submission indicates that the Commonwealth has many SIP-approved regulations and programs that limit emissions of $PM_{2.5}$ and the $PM_{2.5}$ precursors SO_2 and NO_X.[13] Among others, these regulations include 310 CMR 7.06, *Visible Emissions* (37 FR 23085; October 28, 1972); 7.07, *Open Burning* (45 FR 40987; June 17, 1980); 7.08, *Incinerators* (64 FR 48095; September 2, 1999); 7.09, *Dust, Odor, Construction and Demolition* (81 FR 47708; July 22, 2016); 7.19, *Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X)* (80 FR 61101; October 9, 2015); and 7.29, *Emission Standards for Power Plants* (78 FR 57487; September 19, 2013).

It should also be noted that Massachusetts is not in the CSAPR program because EPA analyses show that the State does not emit ozone-season NO_X at a level that contributes significantly to non-attainment or interferes with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other State.

For the reasons explained herein, EPA agrees with Massachusetts' conclusions and proposes to determine that Massachusetts will not significantly contribute to nonattainment or interfere with maintenance of the 2006 or 2012 $PM_{2.5}$ NAAQS in any other State. Therefore, EPA proposes to approve the February 2018 infrastructure SIP submission from Massachusetts for prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2006 and 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one State from interfering with measures that are required in any other State's SIP under Part C of the CAA. One way for a State to meet this requirement, specifically with respect to in-State sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-State sources not subject to PSD, this requirement can be satisfied through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS.

On December 26, 2017, EPA issued a finding that Massachusetts had failed to submit a SIP addressing the transport provisions (including prong 3) for the 2012 $PM_{2.5}$ NAAQS. *See* 82 FR 60870. As discussed under element C above, Massachusetts has long been subject to a PSD FIP and has implemented and enforced the federal PSD program through a delegation agreement with EPA. MassDEP's February 2018 submittal does not address the PSD-related aspect of prong 3. Therefore, EPA's December 26, 2017, finding of failure to submit remains with respect to the PSD requirement of prong 3 of 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS but does not trigger any sanctions or additional FIP obligation for the same reasons discussed under element C above.

Under prong 3 of 110(a)(2)(D)(i)(II), EPA also reviews the potential for in-State sources not subject to PSD to interfere with PSD in an attainment or unclassifiable area of another State. EPA generally considers a fully approved NNSR program adequate for purposes of meeting this requirement of prong 3 with respect to in-state sources and pollutants not subject to PSD. *See* 2013 memorandum. EPA last approved the Commonwealth's NNSR program on October 27, 2000. 65 FR 64360. Because Massachusetts is located within the Ozone Transport Region (OTR), *see*

[11] Massachusetts' $PM_{2.5}$ design values for all ambient monitors are available in the Design Value Reports at *https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values_.html.*

[12] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Massachusetts are available at *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

[13] SO_2 and NO_X contribute to the formation of $PM_{2.5}$.

CAA section 184(a), 42 U.S.C. 7511c(a), the CAA requires sources emitting 100 tons per year (tpy) or more of nitrogen oxides (NO_X) or 50 tpy or more of volatile organic compounds (VOCs) located in attainment or unclassifiable areas to be subject to the requirements that would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. *See* CAA sections 182(f)(1), 184(b)(2), 42 U.S.C. 7511a, 7511c.

In other words, even if located in an area designated attainment or unclassifiable for ozone, under the CAA and its implementing regulations, such sources are subject to NNSR rather than PSD. The major source threshold for NNSR in Massachusetts is currently 50 tpy for NO_X instead of 100 tpy due to the fact that part of Massachusetts had been designated in 1990 as a serious nonattainment area for the 1979 1-hour ozone standard.[14] [15] Massachusetts's current SIP-approved NNSR regulations, however, apply by their terms only to nonattainment areas,[16] meaning that sources with 50 tpy (see footnote 15) or more of VOCs or NO_X emissions in much of Massachusetts are not covered by either the PSD FIP, applicable in the Commonwealth, or the Commonwealth's EPA-approved NNSR program. Thus, the Commonwealth has not shown that it has met this requirement of prong 3. However, as a matter of state regulation, the Commonwealth has promulgated and implements NNSR regulations that make the Commonwealth's NNSR program applicable to such sources regardless of area designation.

On February 9, 2018, Massachusetts submitted a separate SIP revision to make its EPA-approved NSSR program applicable to such sources. EPA is proposing approval of those provisions in a separate rulemaking, and will take final action on that submittal prior to, or in conjunction with, finalizing our action on MassDEP's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS. Accordingly, we propose to approve Massachusetts' submittals for the 2012 $PM_{2.5}$ NAAQS for the NNSR aspect of prong 3.

Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

Regarding the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009, 2011, and 2013 memoranda explain that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

On December 26, 2017, EPA issued a finding that Massachusetts had failed to submit a SIP addressing the transport provisions (including prong 4) for the 2012 $PM_{2.5}$ NAAQS. *See* 82 FR 60870. MassDEP's February 2018 submittal resolves this issue, addressing prong 4 by citing to Massachusetts' Regional Haze SIP, which EPA approved on September 19, 2013. This Regional Haze SIP, which was submitted in December 2011, with two supplemental submittals in August 2012, meets the requirements of 40 CFR 51.308. *See* 78 FR 57487. Accordingly, EPA proposes that Massachusetts meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS. Additionally, in its infrastructure submission for the 2006 $PM_{2.5}$ NAAQS, MassDEP stated that it would rely on its Regional Haze SIP for this requirement. As noted above, EPA approved the Regional Haze SIP in 2013. Accordingly, EPA proposes that Massachusetts meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS.

Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires that each SIP contain provisions requiring compliance with requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring States of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

As mentioned elsewhere in this document, Massachusetts is currently subject to a PSD FIP. In addition, Massachusetts states in its submittal that it relies on the PSD FIP to meet the notice requirement of section 126(a). Therefore, we propose to make a finding of failure to submit for section 110(a)(2)(D)(ii) regarding PSD-related notice of interstate pollution with respect to the 2012 $PM_{2.5}$ NAAQS.[17] This finding does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the federal PSD rules address the notification issue. *See* 40 CFR 52.21(q), 124.10(c)(vii); *see also id.* section 52.1165. Nor does the finding trigger any sanctions. Massachusetts has no obligations under any other provision of section 126.

Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Section 115 authorizes the Administrator to require a state to revise its SIP to alleviate international transport into another country where the Administrator has made a finding with respect to emissions of the particular NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against Massachusetts for the 1997, 2006, or 2012 $PM_{2.5}$ NAAQS. Therefore, EPA proposes that Massachusetts meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the State will have adequate personnel, funding, and legal authority under State law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each State to comply with the requirements under CAA section 128 about State boards. Finally, section 110(a)(2)(E)(iii) requires that, where a State relies upon local or regional governments or agencies for the implementation of its SIP provisions,

[14] On November 6, 1991, the EPA promulgated designations for the 1979 1-hour ozone standard. *See* 56 FR 56694 (November 6, 1991).

[15] Because Massachusetts is in the OTR, the major source threshold for VOCs is 50 tpy.

[16] At the time EPA last approved Massachusetts' NNSR regulations (October 27, 2000; 65 FR 64361), the Western Massachusetts area was nonattainment for the one-hour ozone standard, and the Eastern Massachusetts area was attaining the standard, but was anticipated to become nonattainment as of January 16, 2001, upon EPA's reinstatement of the one-hour ozone NAAQS for that area.

[17] As discussed earlier, *supra* n.6, EPA has previously issued findings of failure to submit for Massachusetts for the PSD-related requirements of 110(a)(2)(D)(ii) for the 1997 ozone, 2008 ozone, 2008 Pb, 2010 NO_2 and 2010 SO_2 NAAQS.

the State retain responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Massachusetts does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Massachusetts, through its infrastructure SIP submittal, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Massachusetts General Laws c. 111, §§ 142A to 142N, provide MassDEP with the authority to carry out the State's implementation plan. The Massachusetts SIP, as originally submitted in 1971 and subsequently amended, provides descriptions of the staffing and funding necessary to carry out the plan. In the submittals, MassDEP provides assurances that it has adequate personnel and funding to carry out the SIP during the five years following infrastructure SIP submission and in future years. Additionally, the Commonwealth receives CAA section 103 and 105 grant funds through Performance Partnership agreements and provides State matching funds, which together enable Massachusetts to carry out its SIP requirements. Therefore, EPA proposes that Massachusetts meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the State board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Massachusetts does not have a State board that approves permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by the Commissioner of MassDEP. Thus, Massachusetts is not subject to the requirements of paragraph (a)(1) of section 128. As to the conflict of interest provisions of section 128(a)(2), Massachusetts cited M.G.L. c. 268A, §§ 6 and 6A of the Commonwealth's Conflict of Interest law in its February 2018 infrastructure SIP submittal for 2012 $PM_{2.5}$ NAAQS.

Pursuant to these State provisions, which were approved into the Massachusetts SIP on December 21, 2016, 81 FR 93627, State employees in Massachusetts, including the head of an executive agency with authority to approve air permits or enforcement orders, are required to disclose potential conflicts of interest to, among others, the State ethics commission. Therefore, we propose to approve the Commonwealth's infrastructure SIP submittal for section 110(a)(2)(E)(ii) for the 2012 $PM_{2.5}$ NAAQS. In addition, we propose to convert to full approval two conditional approvals we previously issued for Massachusetts with respect to section 110(a)(2)(E)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. *See* 77 FR 63228 (October 16, 2012).

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The State plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each State agency with any emission limitations or standards. Lastly, the reports shall be available at reasonable times for public inspection.

Pursuant to M.G.L. c. 111, §§ 142A to 142D, MassDEP has the necessary authority to maintain and operate air monitoring stations, and coordinates with EPA in determining the types and locations of ambient air monitors across the State. The Commonwealth uses this authority to require the installation, maintenance, and replacement of emissions monitoring equipment by, and to collect information on air emissions from, sources in the State. The following SIP-approved regulations enable the accomplishment of the Commonwealth's emissions recording, reporting, and correlating objectives:

1. 310 CMR 7.12, Source Registration.
2. 310 CMR 7.13, Stack Testing.
3. 310 CMR 7.14, Monitoring Devices and Reports.

Additionally, Massachusetts statutes and regulations provide that emissions data shall be available for public inspection. *See, e.g.,* M.G.L. c. 21I, § 20(K); M.G.L. c. 111, § 142B; 310 CMR §§ 3.33(5), 7.12(4)(b); 7.14(1).

EPA recognizes that Massachusetts routinely collects information on air emissions from its industrial sources and makes this information available to the public. EPA, therefore, proposes that the Commonwealth meets the infrastructure SIP requirements of section 110(a)(2)(F) for the 2012 $PM_{2.5}$ NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for State authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' Section 303 further authorizes the Administrator to issue ''such orders as may be necessary to protect public health or welfare or the environment'' in circumstances in which ''it is not practicable to assure prompt protection . . . by commencement of such civil action.''

We propose to find that the Commonwealth's infrastructure SIP submittal demonstrates that certain State statutes and regulations provide for authority comparable to that in section 303. Massachusetts' submittal cites M.G.L. c. 111, § 2B, *Air Pollution Emergencies,* which authorizes the Commissioner of the MassDEP to ''declare an air pollution emergency'' if the Commissioner ''determines that the condition or impending condition of the atmosphere in the Commonwealth . . . constitutes a present or reasonably imminent danger to health.'' During such an air pollution emergency, the Commissioner is authorized pursuant to section 2B, to ''take whatever action is necessary to maintain and protect the public health, including but not limited to . . . prohibiting, restricting and conditioning emissions of dangerous or potentially dangerous air contaminants from whatever source derived . . . .'' Additionally, sections 2B and 2C

authorize the Commissioner to issue emergency orders.

Moreover, M.G.L. c. 21A, § 8 provides that, ''[i]n regulating . . . any pollution prevention, control or abatement plan [or] strategy . . . through any . . . departmental action affecting or prohibiting the emission . . . of any hazardous substance to the environment . . . the department may consider the potential effects of such plans [and] strategies . . . on public health and safety and the environment . . . and said department shall act to minimize and prevent damage or threat of damage to the environment.''

These duties are implemented, in part, under MassDEP regulations at 310 CMR 8.00, *Prevention and Abatement of Air Pollution Episodes and Air Pollution Incident Emergencies,* which EPA approved into the SIP on October 4, 2002 (67 FR 62184). These regulations establish levels that would constitute significant harm or imminent and substantial endangerment to health for ambient concentrations of pollutants subject to a NAAQS, consistent with the significant harm levels and procedures for State emergency episode plans established by EPA in 40 CFR 51.150 and 51.151.[18] Finally, M.G.L. c. 111, § 2B authorizes the State to seek injunctive relief in the superior court for violation of an emergency order issued by the MassDEP Commissioner. While no single Massachusetts statute or regulation mirrors the authorities of CAA section 303, we propose to find that the combination of State statutes and regulations discussed herein provide for comparable authority to immediately bring suit to restrain, and issue orders against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.

Section 110(a)(2)(G) also requires that States have an approved contingency plan (also known as an emergency episode plan) to implement the air agency's emergency episode authority for any Air Quality Control Region (AQCR) within the State that is classified as Priority I, IA, or II for certain pollutants. *See* 40 CFR 51.152(c). For classifications for Massachusetts, see 40 CFR 52.1121. A contingency plan is not required if the entire State is classified as Priority III for a particular pollutant. *Id.* In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (*Prevention of Air Pollution Emergency Episodes*) for the relevant NAAQS, if the NAAQS is covered by those regulations. In the case of $PM_{2.5}$, EPA has not promulgated regulations that provide the ambient levels to classify different priority levels for the 2012 standard (or any $PM_{2.5}$ NAAQS). For the 2006 $PM_{2.5}$ NAAQS, EPA's 2009 memorandum recommends that States develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140 $\mu g/m^3$ since 2006. EPA's review of Massachusetts' certified air quality data in AQS indicates that the highest 24-hour $PM_{2.5}$ level recorded since 2006 was 72.7 $\mu g/m^3$, which occurred in 2012 in Boston in Suffolk County (Site ID 250250042).[19] Therefore, EPA proposes that a specific contingency plan from Massachusetts for $PM_{2.5}$ is not necessary. Furthermore, although not expected, if $PM_{2.5}$ conditions in Massachusetts were to change, MassDEP has general authority to order a source to reduce or discontinue air pollution as required to protect the public health or safety or the environment, as discussed earlier.

In addition, as a matter of practice, Massachusetts forecasts concentrations of $PM_{2.5}$ throughout the year and issues alerts to the public through the EPA AirNow and EPA Enviroflash systems. Information regarding these two systems is available on EPA's website at *www.airnow.gov.* When levels are forecast to exceed the 24-hour $PM_{2.5}$ standard in Massachusetts, notices are sent out to Enviroflash participants, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements for contingency plans in 40 CFR 51.152.

Therefore, EPA proposes that Massachusetts, through the combination of statutes and regulations discussed above and participation in EPA's AirNow program, meets the applicable infrastructure SIP requirements of section 110(a)(2)(G) for the 2012 $PM_{2.5}$ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a State's SIP provide for revision in response to: Changes in the NAAQS, availability of improved methods for attaining the NAAQS, or an EPA finding that the SIP is substantially inadequate.

Massachusetts General Laws c. 111, § 142D provides in relevant part that, ''From time to time the department shall review the ambient air quality standards and plans for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards.'' This authorizing statute gives MassDEP the power to revise the Massachusetts SIP from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate.

EPA proposes that Massachusetts meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) for the 2012 $PM_{2.5}$ NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

Section 110(a)(2)(J) of the CAA requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).'' The evaluation of the submission from Massachusetts with respect to these requirements is described below.

Sub-Element 1: Consultation With Government Officials

Pursuant to CAA section 121, a State must provide a satisfactory process for

[18] The Commonwealth's Contaminant Concentration Levels are found in Table 1 of 310 CMR 8.01, and match EPA's levels from 40 CFR 51.151 except for the averaging time used for ozone. Massachusetts uses a 1-hour averaging time, which is slightly more protective that the 2-hour averaging time EPA provides for this pollutant.

[19] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Massachusetts are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements.

Pursuant to EPA-approved Massachusetts regulations at 310 CMR 7.02(12)(g)(2), MassDEP notifies the public ''by advertisement in a newspaper having wide circulation'' in the area of the particular facility of the opportunity to comment on certain proposed permitting actions and sends ''a copy of the notice of public comment to the applicant, the EPA, and officials and agencies having jurisdiction over the community in which the facility is located, including local air pollution control agencies, chief executives of said community, and any regional land use planning agency.'' In addition, MassDEP included Massachusetts Executive Order 145, ''Consultation with Cities & Towns on Administrative Mandates,'' which establishes a process for state agencies to consult with local governments, in its February 2018 infrastructure SIP submittal for EPA approval. We propose to approve this Executive Order into the Massachusetts SIP.

Massachusetts did not make a submittal, however, with respect to the requirement to consult with FLMs. As previously mentioned, Massachusetts does not have an approved State PSD program, but rather is subject to a PSD FIP. The FIP includes a provision requiring consultation with FLMs. *See* 40 CFR 52.21(p). Consequently, with respect to the 2012 $PM_{2.5}$ NAAQS, EPA proposes that Massachusetts meets the consultation with local governments requirement of this portion of section 110(a)(2)(J), but proposes a finding of failure to submit with respect to the FLM consultation requirement. Because the federal PSD program, which Massachusetts implements and enforces, addresses the FLM consultation requirement, a finding of failure to submit will not result in sanctions or new FIP obligations.

Sub-Element 2: Public Notification

Pursuant to CAA section 127, States must notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Massachusetts regulations specify criteria for air pollution episodes and incidents and provide for notice to the public via news media and other means of communication. See 310 CMR 8.00. The Commonwealth also provides a daily air quality forecast to inform the public about concentrations of fine particles and, during the ozone season, provides similar information for ozone. Real time air quality data for NAAQS pollutants are also available on the MassDEP's website, as are information about health hazards associated with NAAQS pollutants and ways in which the public can participate in regulatory efforts related to air quality. The Commonwealth is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs, which notify the public of air quality levels through EPA's website, alerts, and press releases. Therefore, we propose to find that Massachusetts meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. The Commonwealth's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii), and our proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Specifically, we propose a finding of failure to submit with respect to the PSD sub-element of section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS,[20] and note that such a finding will not result in any sanctions or new FIP obligations.

Sub-Element 4: Visibility Protection

Regarding visibility protection, States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2012 $PM_{2.5}$ NAAQS.

[20] As discussed earlier, *supra* n.6, EPA has previously issued findings of failure to submit for Massachusetts for PSD-related infrastructure requirements for the 1997 ozone, 2008 ozone, 2008 Lead, 2010 NO_2 and 2010 SO_2 NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air-quality modeling as the EPA Administrator may prescribe to predict the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, Appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA also recommends in the 2013 memorandum that, to meet section 110(a)(2)(K), a State submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request.

Massachusetts state law implicitly authorizes MassDEP to perform air quality modeling and provide such modeling data to EPA upon request. *See* M.G.L. c. 21A, § 2(2), (10), (22); M.G.L. c. 111, §§ 142B–142D. In addition, 310 CMR 7.02 authorizes MassDEP to require air dispersion modeling analyses from certain sources and permit applicants. As previously discussed, Massachusetts implements and enforces the federal PSD program through a delegation agreement. This agreement, which is included in the docket for today's action requires MassDEP to follow the applicable procedures in EPA's permitting regulations at 40 CFR 52.21, as amended from time to time. The Commonwealth also collaborates with the Ozone Transport Commission (OTC), the Mid-Atlantic Regional Air Management Association, and EPA to perform large scale urban airshed modeling.

Therefore, EPA proposes that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(K) for the 2012 $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit.

Massachusetts implements and operates the Title V permit program, which EPA approved on September 28, 2001. *See* 66 FR 49541. To gain approval, Massachusetts demonstrated, among other things, that it collects fees sufficient to cover the costs of reviewing and acting on permit applications and implementing and enforcing permits.

See 61 FR 3827 (February 2, 1996); 40 CFR 70.9. M.G.L. c. 21A, § 18 authorizes MassDEP to promulgate regulations establishing fees. To collect fees from sources of air emissions, the MassDEP promulgated and implements 310 CMR 4.00, *Timely Action Schedule and Fee Provisions,* and 310 CMR 7.00, Appendix C, *Operating Permit and Compliance Program.* These regulations set permit compliance fees, including fees for Title V operating permits. EPA proposes that the Commonwealth meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

To satisfy element M, States must provide for consultation and allow participation by local political subdivisions affected by the SIP. Pursuant to M.G.L. c. 111, § 142D, MassDEP must hold public hearings prior to revising its SIP. In addition, M.G.L. c. 30A, Massachusetts Administrative Procedures Act, requires MassDEP to provide notice and the opportunity for public comment and hearing prior to adoption of any regulation. Moreover, the Commonwealth's Executive Order No. 145, ''Consultation with Cities & Towns on Administrative Mandates,'' which we are proposing to add to the Massachusetts SIP, requires State agencies, including MassDEP, to provide notice to the Local Government Advisory Committee to solicit input on the impact of proposed regulations and other administrative actions on local governments. MassDEP also notes that it consults with local political subdivisions though a state ''SIP Steering Committee'' and conducts stakeholder outreach with local entities as a matter of policy when revising the SIP or adopting air regulations. Therefore, EPA proposes that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(M) for the 2012 $PM_{2.5}$ NAAQS.

N. Massachusetts Regulation and Executive Order Submitted for Incorporation Into the SIP

Massachusetts' February 9, 2018, infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS included definitions of *National Ambient Air Quality Standards (NAAQS) or Federal Ambient Air Quality Standards, PM_{10} or Particulate Matter 10, PM_{10} Emissions, $PM_{2.5}$ or Particulate Matter 2.5,* and *$PM_{2.5}$ Emissions* in 310 CMR 7.00 that Massachusetts included in a submittal to EPA dated May 14, 2018 and Executive Order No. 145, ''Consultation with Cities & Towns on Administrative Mandates'' (see discussion under element J, Sub-element 1). EPA is proposing to approve, and incorporate into the Massachusetts SIP, the five submitted definitions in 310 CMR 7.00 and Executive Order 145.

IV. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by Massachusetts on February 9, 2018, for the 2012 $PM_{2.5}$, including the interstate transport requirements. This submittal also addresses the interstate transport requirements for the 2006 $PM_{2.5}$ NAAQS, which we are likewise proposing to approve. In addition, EPA is proposing to approve a SIP revision submitted by Massachusetts on January 31, 2008, for the interstate transport requirements for the 1997 $PM_{2.5}$ NAAQS.

EPA's proposed action for each element for the 2012 $PM_{2.5}$ NAAQS is stated in Table 1 below.

TABLE 1—PROPOSED ACTION ON MASSACHUSETTS' INFRASTRUCTURE SIP SUBMITTAL FOR THE 2012 $PM_{2.5}$ NAAQS

Element	2012 $PM_{2.5}$ NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	FS
(C)3: PSD program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	FS
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	FS
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	FS
(J)2: Public notification	A
(J)3: PSD	FS
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve.
NA	Not applicable.
FS	Finding of failure to submit.
+	Not germane to infrastructure SIPs.

EPA also is proposing to approve the transport provisions (Element (D)1 in Table 1) for the 1997 and 2006 $PM_{2.5}$ NAAQS, as well as the Visibility Protection requirements (Element (D)3 in Table 1) for the 2006 $PM_{2.5}$ NAAQS.

We are also proposing to convert to full approval previous conditional approvals for elements A and E(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS and previous conditional approvals for element A for the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. For the 1997 and 2006 $PM_{2.5}$ NAAQS, we are also proposing approvals for prong 4 of section 110(a)(2)(D)(i)(II) and for the section 115-related requirements of section 110(a)(2)(D)(ii).

As shown in Table 1, we are proposing to issue a finding of failure to submit for the PSD-related requirements of (C)2, (D)2, (D)4, (J)1, and (J)3. However, as noted above, Massachusetts is already subject to a FIP for PSD, and so EPA will have no additional FIP obligations under section 110(c) of the Act if this action is finalized as proposed. Furthermore, this action will not subject the Commonwealth to mandatory sanctions.

EPA is also proposing to approve, and incorporate into the Massachusetts SIP, definitions of *National Ambient Air Quality Standards (NAAQS) or Federal Ambient Air Quality Standards, PM_{10} or Particulate Matter 10, PM_{10} Emissions, $PM_{2.5}$ or Particulate Matter 2.5, and $PM_{2.5}$ Emissions* in 310 CMR 7.00 that Massachusetts included in a submittal to EPA dated May 14, 2018.

Finally, EPA is proposing to approve, and incorporate into the Massachusetts SIP, Massachusetts Executive Order 145, *Consultation with Cities & Towns on Administrative Mandates,* effective November 20, 1978, which Massachusetts included for approval in its infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking 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**.

V. 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 Executive Order 145 and the part of 310 CMR 7.00 referenced in Section IV above. 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).

VI. 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 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);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 11, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019–02658 Filed 2–19–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2018–0852; FRL–9989–07–Region 7]

Air Plan Approval and Approval of Operating Permits Program; Nebraska; Adoption of the 2015 Ozone Standard and Revisions to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the State Implementation Plan (SIP), and Operating Permits Program for the State of Nebraska as submitted on August 22, 2018. This action proposes to adopt the 2015 primary and secondary National Ambient Air Quality Standards for Ozone, published in the **Federal Register** on October 26, 2015. The EPA is also proposing to approve revisions which are administrative in nature. These revisions include updating a reference to EPA's regulation used in the definition of ''Global Warming

Potentials'', removing ''Greenhouse Gases'' from the definition of ''Regulated Air Pollutant'', and updating a reference to EPA's regulations used in the definition of ''Volatile Organic Compound''. Other typographical and reformatting revisions are also being made. Approval of these revisions will not impact air quality, ensures consistency between the State and Federally-approved rules, and ensures Federal enforceability of the State's rules.

DATES: Comments must be received on or before March 22, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2018–0852 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7391; email address *crable.gregory@epa.gov.*

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2018–0852, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve revisions to the State Implementation Plan (SIP) and the Operating Permit Program submitted on August 22, 2018, by the State of Nebraska. Nebraska's August 22, 2018, submittal included revisions to chapters 1, 4, 20, 28 and 34 of title 129. In this action, EPA is only addressing revisions to title 129 of the Nebraska Administrative Code, chapter 1 ''Definitions''; chapter 4 ''Ambient Air Quality Standards''; chapter 20 ''Particulate Emissions; Limitations and Standards''; and chapter 34 ''Emission Sources; Testing; Monitoring''. The EPA is not acting on chapter 28 ''Hazardous Air Pollutant; Emissions and Standards'', although included in the state's submission, because the chapter is not approved in the Nebraska SIP.

The EPA is proposing revisions to the Nebraska SIP and Operating Permits Program for title 129, chapter 1 ''Definitions''. The revision to title 129, chapter 1, section 064, updates the reference for ''Table A–1—Global Warming Potentials'', and the effective date of the reference. The revision to section 109 of chapter 1 corrects a typographical error clarifying the meaning of ''person'', ensuring consistency with the Federal definition. Nebraska Department of Environmental Quality (NDEQ) is removing section 130.05, ''Greenhouse gases'' and section 130.05A from the definition of ''Regulated Air Pollutant'', as a result of the Supreme Court's invalidation of portions of the Greenhouse Gas Tailoring Rule. Finally, the revision to chapter 1, section 160, ''Volatile Organic Compounds'', updates the reference to the appropriate sections of the Federal regulation pertaining to these rules and the effective date of the reference.

The following are proposed revisions to the Nebraska SIP. Title 129, chapter 4, section 005, is proposed for revision by adopting the 2015 primary and secondary National Ambient Air Quality Standards for Ozone, (80 FR 65292, October 26, 2015), and by revising the reference to include appendix U to 40 CFR part 50 to be consistent with Federal regulations, and by updating the effective date of the reference.

Chapter 20, of title 129, is proposed for revision to correct references to and re-number tables 20–1 and 20–2 by moving the tables under the correct sections of the chapter for consistency. Text presently found in section 007 is being moved to section 001 and renumbered as new subsection 001.01. Section 007 is marked ''Reserved''.

Finally, chapter 34, of title 129 is proposed for revision by correcting the typographical error in section 002.02 in the effective date of 40 CFR part 60 appendices. This revision clarifies the effective date by replacing the date July 12, 2002 with July 1, 2002.

III. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revised chapters were placed on public notice on May 1, 2017, and a public hearing was held by the State of Nebraska on June 13, 2017, where no comments were received. In addition, as explained above, the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

IV. What action is EPA taking?

The EPA is proposing to approve into the SIP and as applicable, into the Operating Permits Program, revisions to title 129, chapters 1, 4, 20 and 34 as submitted by NDEQ on August 22, 2018. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Nebraska Regulations described in the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

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.

40 CFR Part 70

Environmental protection, Air pollution control, Incorporation by reference, Administrative practice and procedure, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 8, 2019.

James B. Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR parts 52 and 70 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—CC Nebraska

■ 2. In § 52.1420, paragraph (c), the table is amended by revising entries ''129–1 Definitions'', ''129–4 Ambient Air Quality Standards'', ''129–20 Particulate Emissions; Limitations and Standards'', and ''129–34 Emission Sources; Testing; Monitoring'' to read as follows:

§ 52.1420 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
State of Nebraska				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
129–1	Definitions	7/15/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*
129–4	Ambient Air Quality Standards.	7/15/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*
129–20	Particulate Emissions: Limitations and Standards.	7/15/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*
129–34	Emission Sources; Testing; Monitoring.	7/15/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	

EPA-APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Amend appendix A to part 70 by adding new paragraph (p) under ''Nebraska; City of Omaha; Lincoln-Lancaster County Health Department'' to read as follows:

Appendix A to Part 70 Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

* * * * *

(p) The Nebraska Department of Environmental Quality submitted revisions to The Nebraska Administrative Code, title 129, chapter 1, ''Definitions'' on August 22, 2018. The state effective date is July 15, 2018. This revision is effective [date 60 days after date of publication of the final rule in the **Federal Register**].

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[FR Doc. 2019–02832 Filed 2–19–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 181210999–9067–01]

RIN 0648–BI66

Fisheries of the Northeastern United States; Framework Adjustment 30 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement the measures of Framework Adjustment 30 to the Atlantic Sea Scallop Fishery Management Plan that establishes scallop specifications and other measures for fishing years 2019 and 2020. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource. The intended effect of this rule is to notify the public of these proposed measures and to solicit comment on the potential scallop fishery management changes.

DATES: Comments must be received by March 7, 2019.

ADDRESSES: The New England Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in Framework Adjustment 30 and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a decision draft of Framework 30 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 30, the draft EA, the IRFA, and information on the economic impacts of this proposed rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/framework-30-1.*

You may submit comments on this document, identified by NOAA–NMFS–2019–0002, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0002,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Framework 30.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework 30 to the Atlantic Sea Scallop FMP on December 5, 2018. The Council submitted a decision draft of the framework, including a draft EA, for NMFS review and approval on December 19, 2018. This action proposes to approve and implement Framework 30, which establishes scallop specifications and other measures for fishing years 2019 and 2020, includes changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2019, and default specifications for fishing year 2020.

NMFS will implement these measures of Framework 30, if approved, as close as possible to the April 1 of fishing year 2019. If NMFS implements these Framework 30 measures after the start of the fishing year, 2019 default allocation measures will go into place on April 1, 2019. The Council has reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate as

specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), Annual Projected Landings (APLs) and Set-Asides for the 2019 Fishing Year, and Default Specifications for Fishing Year 2020

The proposed allocations incorporate new biomass reference points that resulted from the Northeast Fisheries Science Center's most recent scallop stock benchmark assessment that was completed in August 2018. The assessment reviewed and updated the data and models used to assess the scallop stock and ultimately updated the reference points for status determinations. The scallop stock is considered overfished if the biomass is less than half of the biomass at maximum sustainable yield (B_{msy}), and overfishing is occurring if fishing mortality (F) is above the fishing mortality at maximum sustainable yield (F_{msy}). The assessment found that the scallop resource is not overfished and overfishing is not occurring, but the estimates for F_{msy} and B_{msy} have changed. A comparison of the old and new reference points is outlined in Table 1.

TABLE 1—SUMMARY OF OLD AND NEW SCALLOP REFERENCE POINTS FROM THE LAST TWO BENCHMARK SCALLOP STOCK ASSESSMENTS IN 2014 AND 2018

	2014 Assessment	2018 Assessment
F_{msy}	0.48	0.64.
B_{msy}	96,480 mt	116,766 mt.
½ B_{msy}	48,240 mt	58,383 mt.

Due to these reference point updates, the fishing mortality rates that the Council uses to set OFL, ABC, and ACL would be updated through this action. The proposed OFL was set based on an F of 0.64, equivalent to the F threshold updated through the 2018 assessment. The proposed ABC and the equivalent total ACL for each fishing year are based on an F of 0.51, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 125.7 million lb (57,003 mt) for 2019 and 101.5 million lb (46,028 mt) for the 2020 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2020 when the Council develops the next framework adjustment.

Table 2 outlines the proposed scallop fishery catch limits. After deducting the incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the FMP (72 FR 20090; April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (*i.e.,* the larger ''trip boat'' fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (*i.e.,* the smaller ''day boat'' fleet); and the remaining 0.5 percent is allocated to limited access scallop vessels that also have LAGC IFQ permits. Amendment 15 to the FMP (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC ACLs, meaning that the LAGC ACL would equal the LAGC ACT. For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.46.

TABLE 2—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2019 AND 2020 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS

Catch limits	2019 (mt)	2020 (mt) [1]
Overfishing Limit	73,421	59,447
Acceptable Biological Catch/ACL (discards removed)	57,003	46,028
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	570	460
ACL for fishery	55,843	44,978
Limited Access ACL	52,772	42,504
LAGC Total ACL	3,071	2,474
LAGC IFQ ACL (5 percent of ACL)	2,792	2,249
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	279	225
Limited Access ACT	47,598	38,337
APL (after set-asides removed)	27,209	([1])
Limited Access Projected Landings (94.5 percent of APL)	25,713	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,497	1,122
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,360	1,020
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	136	102

[1] The catch limits for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2020 that will be based on the 2019 annual scallop surveys.

[2] As a precautionary measure, the 2020 IFQ annual allocations are set at 75 percent of the 2019 IFQ Annual Allocations.

This action would deduct 1.25 million lb (567 mt) of scallops annually for 2019 and 2020 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million-lb (567-mt) allocation, NMFS has already allocated 103,418 lb (46,902 kg) to previously-funded multi-year projects as part of the 2018 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2019 RSA awards and will be selecting projects for funding in the near future.

This action would also deduct 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 570 mt for 2019 and 460 mt for 2020. The Council may adjust the 2020 observer

set-aside when it develops specific, non-default measures for 2020.

Open Area Days-at-Sea (DAS) Allocations

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2019 and 2020 (Table 2). Proposed 2019 DAS allocations are the same as those allocated to the limited access fleet in 2018. Framework 30 would set 2020 DAS allocations at 75 percent of fishing year 2019 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2020 specifications action is delayed past the start of the 2020 fishing year. The proposed allocations in Table 3 exclude any DAS deductions that are required if the limited access scallop fleet exceeded its 2018 sub-ACL.

TABLE 3—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2019 AND 2020

Permit category	2019	2020 (default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

If NMFS implements these Framework 30 measures after the April 1 start of fishing year 2019, default DAS allocations, which were established in Framework Adjustment 29 to the Scallop FMP (83 FR 17300; April 19, 2018), would go into place on April 1. Full-time vessels would receive 18 DAS, Part-time vessels would receive 7.20 DAS, and occasional vessels would receive 1.50 DAS. The allocations would later be increased in accordance with Framework 30, if approved. NMFS will send a letter to all limited access permit holders providing both default and Framework 30 DAS allocations so that vessel owners know what mid-year adjustments would occur should Framework 30 be approved and implemented after April 1, 2019.

Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

For fishing year 2019 and the start of 2020, Framework 30 would keep the Mid-Atlantic Access Area (MAAA), Nantucket Lightship-West Access Area (NLS–W), and Closed Area 1 Access Area (CA1) open as access areas. In addition, this action would close the Nantucket Lightship-South Access Area (NLS–S).

Closed Area 1 Flex Allocation

Framework 30 will allocate a new type of flexible allocation in Closed Area 1. Limited access full-time and part-time vessels would be allocated 18,000 lb (8,165 kg) and 17,000 lb (7,711 kg) of flexible allocation (flex allocation) in CA1 (Table 4 and Table 5). Because of uncertainty about the condition of the resource in CA1, scallops allocated to the limited access fleet in CA1 could be landed in any available access area. For the 2019 fishing year and the first 60 days of the 2020 fishing year, limited access vessels may choose to land CA1 flex allocation from any access area available in fishing year 2019 (*i.e.,* MAAA and/or NLS–W). For example, a full-time vessel could take a trip in the CA1 and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the CA1 flex allocation available, which could be landed from MAAA and/or NLS–W. Trips could be combined with allocation dedicated to those areas, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

Table 4 provides the proposed limited access full-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 4) on any one trip.

TABLE 4—PROPOSED SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2019 AND 2020

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Mid-Atlantic		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Total		126,000 lb (57,153 kg)	36,000 lb (16,329 kg).

*Closed Area 1 flex allocation can be landed in any available access area.

Table 5 provides the proposed limited access part-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 5) on any one trip.

TABLE 5—PROPOSED SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2019 AND 2020

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	17,000 lb (7,711 kg) per trip	17,000 lb (7,711 kg)	0 lb (0 kg).
Nantucket Lightship West		17,000 lb (7,711 kg)	7,200 lb (32,66 kg).
Mid-Atlantic		17,000 lb (7,711 kg)	7,200 lb (3,266 kg).
Total		51,000 lb (23,133 kg)	14,400 lb (6,532 kg).

*Closed Area 1 flex allocation can be landed in any available access area.

For the 2019 fishing year, an occasional limited access vessel would be allocated 10,500 lb (4,763 kg) of scallops with a trip possession limit at 10,500 lb (4,763 kg) of scallops per trip. Occasional vessels would be able to

harvest 10,500 lb (4,763 kg) allocation from only one of three available access areas (CA1, NLS–W, or MAAA). For the 2020 fishing year, occasional limited access vessels would be allocated 10,500 lb (4,763 kg) in the MAAA only with a trip possession limit of 10,500 lb (4,763 kg) per trip.

Limited Access Vessels' One-for-One Area Access Allocation Exchanges

The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another access area. These exchanges may only be made for the amount of the current trip possession limit (18,000 lb (8,165 kg) for full-time vessels and 17,000 lb (7,711 kg) for part-time vessels). In addition, these exchanges would be made only between vessels in the same permit category. For example, a full-time vessel may not exchange allocations with a part-time vessel, and vice versa.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action would implement a 2,792-mt ACL for 2019 and a 2,249-mt default ACL for 2020 (see Table 2). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing years 2019 and 2020 based on APL would be 1,360 mt for 2019 and 1,020 mt for 2020 (see Table 2). Each vessel's IFQ would be calculated from these allocations based on APL.

If NMFS implements these Framework 30 measures after the April 1 start of the 2019 fishing year, the default 2019 IFQ allocations would go into place automatically on April 1, 2019. Because this action would implement IFQ allocations greater than the default allocations, NMFS will send a letter to IFQ permit holders providing both default 2019 and Framework 30 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 30 be approved.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. For limited access scallop vessels with IFQ permits, this action would implement a 279-mt ACL for 2019 and a default 225-mt ACL for 2020 (see Table 2). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits for fishing years would be 136 mt for 2019 and 102 mt for 2020 (see Table 2). Each vessel's IFQ would be calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 30 would allocate LAGC IFQ vessels a fleet-wide number of trips in the CA1, NLS–W, and MAAA for fishing year 2019 trips and default fishing year 2020 trips in the MAAA (see Table 6). The scallop catch associated with the total number of trips for all areas combined (3,997) for fishing year 2019 is equivalent to the 5.5 percent of total catch from access areas.

TABLE 6—FISHING YEARS 2019 AND 2020 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2019	2020 [1]
Closed Area 1	571	0
Nantucket Lightship-West	1,713	571
Mid-Atlantic	1,713	571
Total	3,997	1,142

[1] The LAGC IFQ access area trip allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment.

4. Northern Gulf of Maine (NGOM) TAC. This action proposes a 205,000-lb (92,986-kg) annual NGOM TAC for fishing years 2019 and 2020. The NGOM portions of Framework 29 (83 FR 12857; March 26, 2018) developed a methodology for splitting the TAC between the LAGC and the limited access fleets. The limited access portion of the TAC may only be fished by vessels participating in the RSA program that are participating in a project that has been allocated NGOM RSA allocation. Table 7 describes the division of the TAC for the 2019 and 2020 (default) fishing years.

TABLE 7—NGOM TACS FOR FISHING YEAR 2019 AND 2020

Fleet	2019		2020 (default)	
	lb	kg	lb	kg
LAGC	137,500	62,369	120,000	5,443
Limited access	67,500	30,617	50,000	22,680
Total	205,000	92,986	170,000	77,111

5. Scallop Incidental Catch Target TAC. This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2019 and 2020 to account for mortality from vessels that catch scallops while fishing for other species, and to ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action proposes that vessels participating in RSA projects would be able to harvest RSA compensation from NLS–W, MAAA, and the open area. All vessels would be prohibited from harvesting RSA compensation pounds in CA1. Vessels would be prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project, as implemented in the NGOM portions of Framework 29. Finally, Framework 30 would prohibit the harvest of RSA from any access areas under default 2020 measures. At the start of 2020, RSA compensation could only be harvested from open areas. The Council would re-evaluate this default prohibition measure in the action that would set final 2020 specifications.

Standardized Default Allocations

The Scallop FMP allocates fishery specifications on an annual basis

including open-area DAS and access area trips for the limited access component, IFQ to qualifying LAGC IFQ vessels, and access area trips to the LAGC IFQ fleet. Default specifications have been developed in this annual process so that the fishery may continue to operate at a conservative level if updated specifications are not in place by April 1 (start of the fishing year). To reduce the number of decisions made by the Council, and workload for Council's Plan Development Team and staff to develop default measures on an annual basis that have predictable outcomes, this action proposes to standardize the process for developing some default measures.

Framework 30 would standardize the default DAS allocations for the limited access fleet. During the specifications setting process, each limited access permit type would receive 75 percent of Fishing Year 1 open area DAS to begin the subsequent fishing year. In addition, this action would standardize the default LAGC IFQ allocation. The LAGC IFQ component would receive 75 percent of Fishing Year 1 quota allocation. This action would not allocate default access area trips for the limited access or LAGC IFQ component, and it would not standardize default allocations to the NGOM.

Standardized Approach To Setting LAGC IFQ Access Area Trips

The LAGC IFQ fishery is allocated a fleetwide total number of access area trips. Individual vessels are not required to take trips in specific areas as is the case for access area trips allocated to the limited access fishery. Instead, a maximum number of trips are identified for each area and, once that limit is reached, the area closes to all LAGC IFQ vessels for the remainder of the fishing year. The level of allocation can vary and is specified in each framework action. Framework 30 would standardize overall access area allocations to the LAGC IFQ component by allocating the amount equivalent to 5.5 percent of total projected access area harvest by the limited access and LAGC IFQ components. The total projected access area harvest would be set by:

1. First, multiplying the number of full-time access area trips by the full-time limited access fleet's access area possession limit and the number of full-time equivalent permits in the fishery (327).

2. Next, dividing the expected limited access fleet's access area harvest by 0.945 to calculate total expected access area harvest, and

3. Finally, calculating the number of access area trips allocated to the LAGC IFQ fleet by dividing 5.5 percent of total expected access area harvest by the LAGC IFQ possession limit.

Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes three revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revision, at § 648.52(g), would clarify that LAGC IFQ scallop vessels cannot exceed the scallop possession limit unless they are carrying an observer. The second revision, at § 648.53(h)(4)(ii) and (iii), would adjust the specific timing for the LAGC IFQ Cost Recovery Program to more accurately reflect the realities and limitations of how the program has been operating. The current regulatory language states that NMFS shall mail out cost recovery bills on or about October 31 of each year, and that the fee must be paid by January 1 of each year. In practice, it is not possible for NMFS to prepare bills on or before October 31, because it does not provide enough time to collect any data from the last few weeks of the cost recovery year, run quality assurance and quality control checks on that data, determine total recoverable costs, and generate bills. We have determined that cost recovery can be accomplished more effectively and clearly by simply giving up to 60 days for the bill to be paid after it is mailed. The final revision, at § 648.59(d), would clarify that limited access scallop vessels cannot exceed the scallop possession limit unless they are carrying an observer.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Sea Scallop FMP, 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.

An IRFA has been prepared for Framework 30, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA consists of Framework 30 analyses, the draft IRFA, and the preamble to this proposed rule.

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2019, with 2020 default measures. A description of the action, why it is being considered, and the legal basis for this action are contained in the Council's Framework 30 document and the preamble of this proposed rule, and are not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Federal Rules Which May Duplicate, Overlap or Conflict With This Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other Federal laws.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed regulations would affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large. As explained in the section below, the proposed regulations are expected to result in slightly higher profits for small entities. Framework 30 provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state (see **ADDRESSES**). Fishing year 2017 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 307 vessels that held full-time limited access permits in 2017, including 247 dredge, 50 small-dredge, and 10 scallop trawl permits. In the same year, there were also 31 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2017. NMFS issued 240 LAGC IFQ permits and 95 LAGC NGOM permits in 2017, of which, about 127 of the IFQ vessels and 32 NGOM vessels actively fished for scallops in 2017. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.5 of Framework 30 provides extensive information on the

number and size of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this proposed rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, ownership entities are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity, that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement between the two owners for the additional vessels would be considered a separate ownership entity for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2017 permits. This analysis considers average gross sales associated with the permits in the current ownership dataset for calendar years 2015 through 2017 to provide a recent average. Matching the potentially impacted 2017 fishing year permits (limited access permits and LAGC IFQ permits) to calendar year 2017 ownership data results in 164 distinct ownership entities for the limited access fleet, and 101 distinct ownership entities for the LAGC IFQ fleet. Of these, based on the Small Business Administration guidelines, 157 of the limited access distinct ownership entities and 101 of the LAGC IFQ entities are categorized as small entities. The remaining seven of the limited access and none of the LAGC IFQ entities are categorized as large entities. There were 32 distinct small business entities with active NGOM permits in 2017.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council's preferred alternative (Alternative 3, Sub-option 2, Section 4.3.3.2, in the Council's EA) would allocate each full-time limited access vessel 24 open area DAS and 7 access area trips, amounting to 126,000 lb (57,153 kg) with a possession limit of 18,000 lb (8,165 kg) for each trip. This is estimated to result in about 56.7 million lb (26.2 million kg) of landings for the limited access fishery after the set asides are removed, and about 62.5 million lb (28.3 million kg) of landings including set-asides and LAGC sub-ACL (Table 8). The LAGC IFQ sub-ACL for vessels with IFQ permits only will be close to 3.0 million pounds (1.4 million kg) and, including those limited access vessels with IFQ permits, will be about 3.3 million lb (1.5 million kg). This alternative is expected to have low positive impacts on the net revenues and profits small entities regulated by this action in 2019 compared to the status quo scenario, because, while it would allocate more allocation to access areas, it would allocate the same amount of DAS to the fleet (24 DAS). As a result, the preferred alternative would have about 0.2 percent higher net revenue per entity compared to the status quo levels, translating to higher profits (Table 9).

TABLE 8—SPECIFICATION ALTERNATIVES UNDER CONSIDERATION IN FRAMEWORK 30

Alternative	EA Section	DAS	Scenario	Landings (mil lb/kg)		Revenue (mil 2001 $)
Alternative 1	4.3.1	18 DAS (F=0.18)	One MAAA at 18k	22.9	10.4	170
Alternative 2	4.3.2	26 DAS (F=0.25)	7 trips at 15k	57.6	26.1	381
Alternative 3	4.3.3.1 Preferred	26 DAS (F=0.25)	1 CAI FLEX trip, 7 trips at 18k.	64.2	29.1	413
	4.3.3.2 Perferred	24 DAS (F=0.23)	1 CAI FLEX trip, 7 trips at 18k.	62.5	28.3	406
Alternative 4	4.3.4	24 DAS (F=0.23)	1 CAI FLEX trip at 15k, 6 trips at 18k.	61.5	27.9	400
Alternative 5	4.3.5	F=0.295 (30 DAS)	For Comparison Only	63.1	28.6	407

TABLE 9—NET SCALLOP REVENUE FOR LIMITED ACCESS VESSELS AND PERCENT CHANGE FROM THE STATUS QUO UNDER THE PROPOSED ACTION

[2019 fishing year, revenues in 2018 dollars]

Alternative		Alt.1	Alt.2	Alt.3	Alt.3—Preferred	Alt.4	Alt.5
Values/RUN		No Action	7at15k	F25FLEX18k	24DASFLEX18k	24DASFLEX15k	Status Quo.
Landings (LA vessels, mill. lb/kg.)	lb	19.2	52.0	58.2	56.7	55.7	57.2.
	kg	8.7	23.6	26.4	25.7	25.3	25.9.
Total Scallop Net Rev. (LA vessels, mill. $).		190	461	501	493	486	492.
Net scallop Rev. per entity ($)		1,160,165	2,811,338	3,057,712	3,005,555	2,962,932	2,999,713.
Percent change in net scallop revenue.		−61.3%	−6.3%	1.9%	0.2%	−1.2%	0.0%

Under the preferred alternative, allocation for the LAGC IFQ fishery, excluding the limited access vessels with IFQ permits, will be about 0.8 percent lower than the allocation under the status quo. However, under the

proposed action, DAS and trip costs would be lower due to smaller allocations and higher landings per unit effort relative to the status quo. Therefore, in terms of net revenue, the difference between the proposed action and the status quo values is expected to be even smaller. Therefore, the preferred alternative will have negligible economic impacts on the LAGC IFQ fishery compared to the status quo scenario (Table 10).

TABLE 10—IMPACTS OF THE LAGC IFQ TAC FOR 2019 FISHING YEAR

EA Section		4.3.1	4.3.2	4.3.3.1	4.3.3.2	4.3.4	4.3.5
Alternative		Alt.1	Alt.2	Alt.3	Alt.3—preferred	Alt.4	Alt.5
Values/RUN		No Action	7at15k	F25FLEX18k	24DAS FLEX18k	24DAS FLEX15k	Status Quo.
TAC for IFQ vessels (mill. lb/kg)	lb	1.02	2.75	3.08	3.00	2.95	3.02.
	kg	0.46	1.25	1.40	1.36	1.34	1.37.
TAC for LA vessels with IFQ permits (mill. lb/kg).	lb	0.10	0.28	0.31	0.30	0.29	0.30.
	kg	0.05	0.13	0.14	0.14	0.13	0.14.
Total TAC for IFQ fishery (mill.lb/kg)	lb	1.12	3.03	3.39	3.30	3.24	3.33.
	kg	0.51	1.37	1.54	1.50	1.47	1.51.
% Change in estimated scallop landings and revenue per business entity from Status Quo.		−66.3%	−9.1%	1.9%	−0.8%	−2.6%	0.0%.

Under the preferred alternative (Alternative 2 Sub-Option 1, Section 4.3.3.2), total allowable catch (TAC) for the NGOM management area will be set at 205,000 pounds in 2019. The first 70,000 pounds will be allocated to the LAGC component of the fishery. The remaining poundage will be split 50/50 between the LAGC and the limited access components of the fishery. For the 2019 fishing year, the overall shares for LAGC vessels will be 137,500 pounds, and for limited access vessels the overall shares will be 67,500 pounds (Table 8). The limited access share of the NGOM TAC can be utilized only for research set-aside (RSA) compensation fishing.

NGOM TAC for the preferred alternative, Alternative 2 Sub-Option 1, Section 4.3.3.2, (overall TAC of 205,000 lbs (92,986 kg)), would be higher than the TAC for the No Action alternative, Alternative 1, (overall TAC of 135,000 lbs (61,224 kg)). As a result, the net revenue for the LAGC NGOM fishery is expected to increase by 25 percent under the preferred alternative, compared to the No Action alternative, resulting in positive impacts on the profits of NGOM LAGC entities.

The economic benefits of all of the other alternatives, including the preferred alternative adopted in this proposed rule, considered in this action would exceed the benefits for the No Action alternative. The specifications alternative, Alternative 3 Sub-Option 1, Section 4.3.3.1, which allocates 26 DAS, would have the highest landings and net revenues in 2019 (see Table 9, 10, and 11). Although Alternative 3, Sub-Option 1, Section 4.3.3.1 net revenues would be slightly higher than net revenues for the preferred alternative (Alternative 3 Sub-Option 2, Section 4.3.3.2) because Alternative 3 allows for 2 more open area DAS to be allocated than are allocated under the preferred alternative, we have determined that the preferred alternative is optimal because it would minimize risks associated with stock biomass uncertainties in those areas.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 12, 2019.

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 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

Subpart A—General Provisions

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14:

■ a. Remove and reserve paragraph (i)(2)(viii); and

■ b. Revise paragraphs (i)(4)(i)(C) and (i)(5)(iii).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(viii) [Reserved]

* * * * *

(4) * * *

(i) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the LAGC share of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

(5) * * *

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the LAGC share of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 3. In § 648.52 revise paragraph (g) to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator in accordance with § 648.59(d), provided the observer set-aside specified in § 648.59(d)(1) has not been fully utilized. For example, if the LAGC IFQ vessel possession limit is 600 lb (272.2 kg) and the additional allowance to defray the cost of an

observer is 200 lb (90.7 kg), the vessel could retain up to 800 lb (362.9 kg) when carrying an observer, regardless of trip length. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation, and it may land it on a subsequent trip. However, the vessel may not exceed the IFQ trip possession limit as described in § 648.52(a) unless it is actively carrying an observer.

* * * * *

■ 4. Amend § 648.53 by:

■ a. Revising paragraphs (a)(6)(iii), (a)(8) and (b)(3);

■ b. Adding paragraph (b)(4); and

■ c. Revising paragraphs (c)(1) and (2) and (h)(4)(ii) and (iii).

The revisions and additions read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(6) * * *

(iii) *LAGC IFQ fleet annual allocation.*

(A) The annual allocation for the LAGC IFQ fishery for vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit shall be equal to 5 percent of the APL. The annual allocation for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the APL.

(B) Standardized default LAGC IFQ allocation. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, after the first-year allocation expires, the second-year default allocation, as described in § 648.55(a), shall be set at 75 percent of the first-year allocation for all vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit and for vessels issued both an LAGC IFQ scallop permit and a limited access scallop permit. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

* * * * *

(8) The following catch limits will be effective for the 2019 and 2020 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch limits	2019 (mt)	2020 (mt) [1]
Overfishing Limit	73,421	59,447
Acceptable Biological Catch/ACL (discards removed)	57,003	46,028
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	570	460
ACL for fishery	55,843	44,978
Limited Access ACL	52,772	42,504
LAGC Total ACL	3,071	2,474
LAGC IFQ ACL (5 percent of ACL)	2,792	2,249
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	279	225
Limited Access ACT	47,598	38,337
APL (after set-asides removed)	27,209	([1])
Limited Access Projected Landings (94.5 percent of APL)	25,713	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,497	1,122
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,360	1,020
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	136	102

[1] The catch limits for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2020 that will be based on the 2019 annual scallop surveys. The 2020 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in (a)(6)(iii)(B) of this section, the 2020 IFQ annual allocations are set at 75 percent of the 2019 IFQ Annual Allocations.

* * * * *

(b) * * *

(3) The DAS allocations for limited access scallop vessels for fishing years 2019 and 2020 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2019	2020 [1]
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

[1] The DAS allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. The 2020 DAS allocations are set at 75 percent of the 2019 allocation as a precautionary measure.

(4) Standardized default DAS allocations. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, after the first-year allocations expire, the second-year default limited access DAS allocations, as described in § 648.55(a), shall be set at 75 percent of the first-year allocation. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

(c) * * *

(1) *Limited access AM exception.* If NMFS determines that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.46, the AM specified in paragraph (c) of this section shall not take effect. The fishing mortality rate of 0.46 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.51.

(2) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its sub-ACL, defined in paragraph (a)(5) of this section, by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the sub-ACL for the limited access fleet was exceeded, and the number of landings in excess of the sub-ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop

fleet is less than 0.46. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

* * * * *

(h) * * *

(4) * * *

(ii) *Fee payment procedure.* On or about October 31 of each year NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS within 60 days from the date of mailing of the recovery bill. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov,* or other internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment website and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS within 60 days from the date of mailing. If the cost recovery payment, as determined by NMFS, is not made within 60 days from the date of mailing, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and decide as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

* * * * *

■ 5. Revise §§ 648.57–648.5 [Reserved] to read as §§ 648.57–648.58 [Reserved].

■ 6. Amend § 648.59 by:

■ a. Revising paragraph (b)(3)(i)(B);

■ b. Adding paragraphs (b)(3)(ii)(A) and (B);

■ c. Revising paragraphs (c) through (e), (g)(3)(iv) and (v) ; and

■ d. Adding paragraphs (g)(4)(i)(A) and (B).

The revisions and additions read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2019 and 2020 fishing years:

(*1*) *Full-time vessels*—(*i*) For a full-time limited access vessel, the possession limit and allocations are:

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Mid-Atlantic		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Total		126,000 lb (57,153 kg)	36,000 lb (16,329 kg).

*Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(*ii*) *Closed Area 1 Access Area flex allocations.* For the 2019 fishing year and the first 60 days of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(*2*) *Part-time vessels*—(*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	17,000 lb (7,711 kg) per trip	17,000 lb (7,711 kg)	0 lb (0 kg).
Nantucket Lightship West		17,000 lb (7,711 kg)	7,200 lb (32,66 kg).
Mid-Atlantic		17,000 lb (7,711 kg)	7,200 lb (3,266 kg).
Total		51,000 lb (23,133 kg)	14,400 lb (6,532 kg).

*Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(*ii*) *Closed Area 1 Access Area flex allocations.* For the 2019 fishing year and the first 60 days of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 17,000-lb (7,711-kg) possession limit is not exceeded on any one trip.

(*3*) *Occasional limited access vessels.* (*i*) For the 2019 fishing year only, an occasional limited access vessel is allocated 10,500 lb (4,763 kg) of scallops with a trip possession limit at 10,500 lb of scallops per trip (4,763 kg per trip). Occasional limited access vessels may harvest the 10,500 lb (4,763 kg) allocation from only one available access area (Closed Area 1, Nantucket Lightship-West, or Mid-Atlantic).

(*ii*) For the 2020 fishing year, occasional limited access vessels are allocated 3,000 lb (1,361 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 3,000 lb of scallops per trip (1,361 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges.*

(A) The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B) *Flex allocation exchanges.* In fishing year 2019, full-time and part-time vessel are respectively allocated 18,000 lb (8,165 kg) and 17,000 lb (7,711 kg) of scallops that may be landed from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. This flex allocation may be exchanged in full for another access area allocation, but only the flex allocation may be landed from any access area. For example, if a Vessel A exchanges 18,000 lb (8,165 kg) of flex allocation for 18,000 lb (8,165 kg) of Mid-Atlantic Access Area allocation with Vessel B, Vessel A would no longer be allowed to land this allocation from the any available access area and may only land this allocation from Mid-Atlantic Access Area, but Vessel B could land the flex allocation in any available access area.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2018, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2019 (April 1, 2019, through May 30, 2019).

(d) *Possession limit to defray the cost of observers.* The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in § 648.55 to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of

set-aside for an increased possession limit. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation or the vessel's allocation for the Scallop Rotational Area that was fished. The vessel may land the remainder of its allowance on a subsequent trip. However, the vessel may not exceed the IFQ or Scallop Rotational Area trip possession limit, as described in § 648.52(a) or § 648.59(b), respectively, unless it is actively carrying an observer.

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2019 and 2020 are:

(1) 2019: Nantucket Lightship-West and Mid-Atlantic.

(2) 2020: No access areas.

* * * * *

(g) * * *

(3) * * *

(iv) *Allocation of Scallop Access Area Trips.* Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, the LAGC IFQ access area trip allocations, specified in paragraph (v) of this section, shall be set at 5.5 percent of the total expected access area harvest for each year.

(v) The following LAGC IFQ access area trip allocations will be effective for the 2019 and 2020 fishing years:

Scallop access area	2019	2020 [1]
Closed Area 1	571	0
Nantucket Lightship-West	1,713	571
Mid-Atlantic	1,713	571
Total	3,997	1,142

[1] The LAGC IFQ access area trip allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment.

(4) *Possession limits*—(i) *Scallops.* (A) A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops.

(B) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 may possess scallops up to the possession limit specified in § 648.52(a), unless otherwise authorized pursuant to paragraph (d) of this section.

* * * * *

■ 6. In § 648.62 revise paragraphs (b)(1) and (c) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The LAGC and the limited access portions of the annual hard TAC for the NGOM 2019 and 2020 fishing years are as follows:

Fleet	2019		2020 (default)	
	lb	kg	lb	kg
LAGC	137,500	62,369	120,000	5,443
Limited access	67,500	30,617	50,000	22,680
Total	205,000	92,986	170,000	77,111

* * * * *

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM or IFQ permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

* * * * *

[FR Doc. 2019–02628 Filed 2–19–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 34

Wednesday, February 20, 2019

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc No. AMS–SC–18–0086; SC19–33/35–1]

Notice of Request for Renewal of a Recordkeeping Burden

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request for renewal a recordkeeping burden for the information collection for the Export Fruit Acts covering exports of apples and grapes.

DATES: Comments on this notice are due by April 22, 2019 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Andrew Hatch, Chief, Program Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC, 20250–0237; Telephone (202) 720–6862 or Email: *andrew.hatch@usda.gov.*

Small businesses may request information on complying with the regulation and responding to this notice by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *richard.lower@usda.gov.*

Comments: Comments should reference the document number and the date and page number of this issue of the **Federal Register**, and be mailed to the Docket Clerk, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted through the internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Fruit Regulations—Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35).

OMB Number: 0581–0143.

Expiration Date of Approval: September 30, 2019.

Type of Request: Request for Renewal of a Recordkeeping Burden.

Abstract: Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (Acts), which are found at 7 CFR parts 33 and 35, respectively. Both Acts were designed to promote foreign trade in the export of apples, grapes and plums grown in the United States; to protect the reputation of the American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. The Acts have been in effect since 1933 (apples) and 1960 (grapes). Currently, plums are not regulated under the Export Grape and Plum Act.

The Secretary of Agriculture is authorized to oversee the implementation of the Acts and issue regulations regarding that activity. Regulations issued under the Acts cover exports of fresh apples and grapes grown in the United States and shipped to foreign destinations, except for grapes shipped to Canada or Mexico and apples in bulk bins shipped to Canada. Certain limited quantity provisions may exempt some shipments from this information collection. Regulations issued under the Acts (7 CFR 33.11 for apples and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each export shipment of fresh apples and grapes complies with quality and shipping requirements effective under the Acts.

The information collection requirements in this request are essential to carry out the intent and administration of the Acts. The currently approved collection under OMB No. 0581–0143 authorizes the use of an Export Form Certificate (SC–205). Federal or Federal-State Inspection Program (FSIP) inspectors use the Export Form Certificate to certify inspection of the shipment for exports bound for non-Canadian destinations. Procedures require shippers to maintain and provide, upon USDA's request, a paper or electronic copy of the SC–205 when needed for USDA to monitor compliance with regulations. Based on procedures amended in 2016 and approved by OMB for information collection purposes, carriers, which transport goods on behalf of shippers, are no longer required to maintain a copy of the SC–205. Earlier versions of the previously used FV–205 and FV–207 make up the SC–205.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to *average 0.083 hours per response.*

Respondents (Recordkeepers): Apple and grape export shippers and carriers.

Estimated Number of Recordkeepers: 94 (75 shippers and carriers of exported apples and 19 shippers and carriers of exported grapes).

Estimated Total Annual Responses: 52,788.

Estimated Number of Responses per Recordkeeper: 564 for apples and 550 for grapes.

Estimated Total Annual Burden on Recordkeepers: 4,378 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. All comments received will be available for public inspection at the street address in the ''Comment'' section and can be viewed at: *www.regulations.gov.*

Dated: February 13, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–02700 Filed 2–19–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on May 6, 2019. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 40th Session of the Codex Committee on Methods of Analysis (CCMAS) of the Codex Alimentarius Commission, in Budapest, Hungary, May 27–31 2019. The U.S. Manager for Codex Alimentarius and the Under Secretary, Office of Trade and Foreign Agricultural Affairs, recognize the importance of providing interested parties the opportunity to obtain background information on the 40th Session of the CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for May 6, 2019, from 2:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The public meeting will take place in the United States Department of Agriculture (USDA), South Building, Room 1452B, 1400 Independence Avenue SW, Washington, DC 20250. Documents related to the 40th Session of the CCMAS will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings-reports/en.*

Gregory O. Noonan, Ph.D., U.S. Delegate to the 40th Session of the CCMAS, invites U.S. interested parties to submit their comments electronically to the following email address: *gregory.noonan@fda.hhs.gov.*

Call in number: If you wish to participate in the public meeting for the 40th Session of the CCMAS by conference call, please register in advance by emailing *Doreen.chenmoulec@osec.usda.gov.* Please use the call-in-number: 1–888–844–9904 and participant code: 512 6092.

Registration: Attendees may register to attend the public meeting by emailing *Doreen.chenmoulec@osec.usda.gov* by April 4, 2019. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above.

For further information about the 40th session of CCMAS: Contact Gregory O. Noonan, Ph.D., Research Chemist, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740. Phone: (240) 402–2250, Fax: (301) 436–2634, Email: *Gregory.Noonan@fda.hhs.gov.*

For information about the public meeting: Contact Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW, Room 4867, South Building, Washington, DC 20250.Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *doreen.chenmoulec@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCMAS is responsible for defining criteria appropriate to Codex Methods of Analysis and Sampling; serving as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories; specifying, on the basis of final recommendations submitted to it by other bodies, reference methods of analysis and sampling, appropriate to Codex standards which are generally applicable to a number of foods; considering, amending, and endorsing, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, (except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of micro-biological quality and safety in food, and the assessment of specifications for food additives, do not fall within the terms of reference of this Committee); elaborating sampling plans and procedures; considering specific sampling and analysis problems submitted to it by the Commission or any of its committees; and defining procedures, protocols, guidelines, or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The CCMAS is hosted by Hungary, and the meeting is attended by the United States as a member country of the Codex Alimentarius.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 40th Session of the CCMAS will be discussed during the public meeting:

- Matters Referred to the Committee by the Codex Alimentarius Commission and Other Subsidiary Bodies
- Endorsement of Methods of Analysis Provisions and Sampling Plans in Codex Standards
- Review of Dairy Methods for Update of the Recommended Methods of Sampling (CXS 234)
- Guidance on Endorsement
- Revision of the Recommended Methods of CXS 234- preamble and structure
- Revision to the Guidelines on Measurement Uncertainty
- Revision of the General Guidelines on Sampling
- Report of an Inter-Agency meeting on Methods of Analysis and Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed by the Secretariat before the Committee Meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the May 6, 2019, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Gregory O. Noonan.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete

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Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on February 13, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2019–02746 Filed 2–19–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on February 25, 2019. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 31st Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission, in Bordeaux, France, March 11–15, 2019. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 31st Session of the CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for February 25, 2019, from 1:00 p.m. EST to 4:00 p.m. EST.

ADDRESSES: The public meeting will take place in Meeting Room 107A at the Whitten Building, 1400 Independence Ave SW, Washington, DC 20250. Documents related to the 31st Session of the CCGP will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings-reports/en.*

Mary Frances Lowe, U.S. Delegate to the 31st Session of the CCGP, invites U.S. interested parties to submit their comments electronically to the following email address: *maryfrances.lowe@osec.usda.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 31st Session of the CCGP by conference call, please use the call-in-number: 888–844–9904 and participant code 5126092.

Registration: Attendees may register to attend the public meeting by emailing *ken.lowery@osec.usda.gov* by February 21, 2019. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above.

For Further Information about the 31st Session of the CCGP Contact: U.S. Delegate, Mary Frances Lowe, U.S. Manager for Codex Alimentarius, U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Telephone: (202) 205–7760, Fax: (202) 720–3157, Email: *maryfrances.lowe@osec.usda.gov.*

For Further Information about the Public Meeting Contact: Ken Lowery, U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone: (202) 690–4042, Fax: (202) 720–3157, Email: *ken.lowery@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on General Principles (CCGP) are:

To deal with such procedural and general matters as are referred to it by the Codex Alimentarius Commission, including:

- The review or endorsement of procedural provisions/texts forwarded by other subsidiary bodies for inclusion in the Procedural Manual of the Codex Alimentarius Commission; and
- the consideration and recommendation of other amendments to the Procedural Manual.

The CCGP is hosted by France. The United States attends CCGP as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 31st Session of the CCGP will be discussed during the public meeting:

- Adoption of the Agenda
- Matters referred to the Committee
- Procedural guidance for committees working by correspondence
- Use of examples in Codex Standards
- Information on activities of FAO and WHO relevant to the work of CCGP
- Other business
- Discussion paper on emerging and future issues of relevance to CCGP
- Date and place of new session
- Adoption of the report

Public Meeting

At the February 25, 2019, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mary Frances Lowe, U.S. Delegate for the 31st Session of the CCGP (see **ADDRESSES**). Written comments should state that they relate to activities of the 31st Session of the CCGP.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *http://*

www.usda.gov/codex/, a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

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To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on February 13, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2019–02747 Filed 2–19–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Foods

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on April 1, 2019. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 13th Session of the Codex Committee on Contaminants in Foods (CCCF) of the Codex Alimentarius Commission, in Yogyakarta, Indonesia, April 29–May 3, 2019. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 13th Session of the CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for April 1, 2019, from 1:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The public meeting will take place in Meeting Room 1A003 at the Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5001 Campus Drive, College Park, MD, 20740–3835. Documents related to the 13th Session of the CCCF will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings-reports/en.*

Dr. Lauren Posnick Robin, U.S. Delegate to the 13th Session of the CCCF, invites U.S. interested parties to submit their comments electronically to the following email address: *henry.kim@fda.hhs.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 13th Session of the CCCF by conference call, please register in advance by emailing *henry.kim@fda.hhs.gov.* To call in, you may use the call-in-number: 1–877–465–7975 and participant code 906 083 160.

You may also join by Webex, using the link: Join Webex meeting; meeting number/access code: 906 083 160; and meeting password: rTEQAMG4.

Registration: Attendees may register to attend the public meeting by emailing *henry.kim@fda.hhs.gov* by March 25, 2019. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone or Web, as discussed above.

For Further Information about the 13th Session of the CCCF: Please contact Henry Kim, Ph.D., FDA, at *henry.kim@fda.hhs.gov,* or Doreen Chen-Moulec, U.S. Codex Office, at *doreen.chenmoulec@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Codex Committee on Contaminants in Foods (CCCF) is responsible for

(a) Establishing or endorsing permitted maximum levels and where necessary, revising existing guideline levels, for contaminants and naturally occurring toxicants in food and feed;

(b) Preparing priority lists of contaminants and naturally occurring toxicants for risk assessment by the joint FAO/WHO Expert Committee on Food Additives (JEFCA).

(c) Considering and elaborating methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed;

(d) Considering and elaborating standards or codes of practice for related subjects; and

(e) Considering other matters assigned to it by the Codex Alimentarius Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee is chaired by the Netherlands.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 13th Session of the CCCF will be discussed during the public meeting:

- Matters referred to CCCF by the Codex Alimentarius Commission and its subsidiary bodies
- Matters of interest arising from FAO and WHO (including JECFA)
- Matters of interest arising from other international organizations
- Proposed draft maximum levels (MLs) for lead in selected commodities in the General Standard for Contaminants and Toxins in Food and Feed (GSCTFF) (CXS 193–1995)
- Proposed draft MLs for cadmium in chocolate and cocoa-derived products
- Draft Code of practice for the reduction of 3-monochloropropane-1,2-diol esters (3–MCPDEs) and glycidyl esters (GEs) in refined oils and food products made with refined oils
- Proposed draft MLs for total aflatoxins in ready-to-eat peanuts and associated sampling plan

- Proposed draft MLs for total aflatoxins and ochratoxin A in nutmeg, dried chili and paprika, ginger, pepper and turmeric and associated sampling plans
- Draft Guidelines for risk analysis of instances of contaminants in food where there is no regulatory level or risk management framework established
- Establishment of new MLs for lead in commodities according to a prioritization approach
- Lead and cadmium in quinoa
- Revision of the Code of Practice for the Prevention and Reduction of Lead Contamination in Foods (CXC 56–2004)
- Development of a code of practice for the prevention and reduction of cadmium contamination in cocoa
- Establishment of MLs for methylmercury in additional fish species
- Establishment of MLs for HCN in cassava and cassava-based products and occurrence of mycotoxins in these products
- Establishment of MLs for total aflatoxins in cereals (wheat, maize, sorghum and rice), flour and cereal-based foods for infants and young children
- General guidance on data analysis for ML development
- Priority list of contaminants and naturally occurring toxicants for evaluation by JECFA
- Follow-up work to the outcome of JECFA evaluations
- Forward workplan for CCCF
- Other business and future work

Public Meeting

At the April 1, 2019, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Henry Kim at *henry.kim@fda.hhs.gov.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

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Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on February 13, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2019–02743 Filed 2–19–19; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2018–0012]

Lick Creek Watershed, Russell, Dickenson and Wise Counties, Virginia

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: NRCS gives notice of the deauthorization of Federal funding for the Lick Creek Watershed project, Russell, Dickenson and Wise Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information contact John Bricker, VA State Conservationist, NRCS, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229, (804) 287–1691 or *Jack.Bricker@va.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566) and the Natural Resources Conservation Service Guidelines (7 CFR part 622), and John Bricker, VA State Conservationist, a determination has been made that the proposed works of improvement for the Lick Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from John Bricker, Virginia State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

Catalog of Federal Domestic Assistance: Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and project is applicable.

Signed this 11th day of February, 2019, in Richmond, Virginia.

John A. Bricker,

VA State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2019–02701 Filed 2–19–19; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 5, 2019, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals from last Wassenaar meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than February 26, 2019.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019–02729 Filed 2–19–19; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; 2016

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review received countervailable subsidies. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable February 20, 2019.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, 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) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2018, Commerce initiated the administrative review of the countervailing duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China).[1] The period of review is January 1, 2016, through December 31, 2016.

On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the duration of the closure of the Federal Government from January 20 through January 22, 2018.[2] As a result, all deadlines in this segment of the proceeding were, at that time, extended by three days.

In addition, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for these preliminary results is now February 12, 2019.

Scope of the Order

The products covered by the countervailing duty order are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this administrative 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 find that there is a subsidy, (*i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient) and that the subsidy is specific.[5] In making this preliminary determination, Commerce relied, in part, on facts otherwise available, with the application of adverse inferences.[6] For further information, see ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the accompanying Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Intent To Rescind Administrative Review, in Part

BYD (Shangluo) Industrial Co., Ltd. (BYD Shangluo) timely filed a no-shipments certification.[7] Because no evidence on the record contradicts this certification, we preliminarily intend to rescind this administrative review with regard to BYD Shangluo. A final decision on whether to rescind the review with respect to BYD Shangluo will be made in the final results of this review.

Preliminary Results of Review

We preliminarily determine the net countervailable subsidy rates for the period January 1, 2016, through December 31, 2016, are as follows:

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 37 (February 23, 2018).

[2] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018.

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[5] *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.

[6] *See* section 776(a) of the Act.

[7] *See* Letter from BYD Shangluo, ''Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People's Republic of China: No Shipment Statement from BYD (Shangluo) Industrial Co., Ltd.,'' dated March 26, 2018.

Company	Subsidy rate (percent)
Canadian Solar Inc. and Cross-Owned Affiliates [8]	16.46
Jinko Solar Import and Export Co., Ltd. and Cross-Owned Affiliates [9]	16.29
Non-Selected Companies Under Review [10]	16.30

Preliminary Rate for Non-Selected Companies Under Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all others rate using the weighted average of the subsidy weights established for the producers/exporters individually examined, excluding any zero, *de minimis,* or rates based entirely on facts available. For the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and for which we are not finding to be cross-owned with the mandatory company respondents, we based the subsidy rate on a weighted-average of the subsidy rates calculated for the two mandatory respondents, Canadian Solar Inc. and Jinko Solar Import and Export Co., Ltd. using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. A list of these non-selected companies can be found in Appendix II of notice.

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[11] Interested parties may submit written comments (case briefs) at a date to be determined by Commerce and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[12] Rebuttal briefs must be limited to issues raised in the case briefs.[13] Commerce will notify interested parties when it has determined a deadline for case briefs. Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[15] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[16] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[17] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time by their respective deadlines.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

In accordance with 19 CFR 351.221(b)(4)(i), we assigned a subsidy rate for each producer/exporter subject to this administrative review. Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review. For 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, 2016, through December 31, 2016, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, 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 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, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

Commerce is issuing and publishing results in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: February 12, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Intent To Rescind the 2016 Administrative Review, In Part
IV. Non-Selected Companies Under Review
V. Scope of the Order
VI. Application of the Countervailing Duty Law to Imports From China
VII. Diversification of China's Economy
VIII. Subsidies Valuation

[8] Cross-owned affiliates are: Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; Canadian Solar Manufacturing (Changshu) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc. (name was changed to CSI Solar Power Group Co., Ltd. in December 2016); CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; CSI New Energy Holding Co., Ltd. (name was CSI Solar Manufacture Inc. until July 2015); CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.; Changshu Tegu New Materials Technology Co., Ltd.; Changshu Tlian Co., Ltd.; and Suzhou Sanysolar Materials Technology Co., Ltd. *See* Preliminary Decision Memorandum.

[9] Cross-owned affiliates are: Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jinko Solar (Shanghai) Management Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; and Xinjiang Jinko Solar Co., Ltd. *See* Preliminary Decision Memorandum.

[10] *See* Appendix II of this notice for a list of all companies that remain under review but were not selected for individual examination, and to whom we have preliminarily assigned the non-selected company rate.

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs.

[13] *See* 19 CFR 351.309(d)(2).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310.

[17] *See* 19 CFR 351.310(c).

IX. Interest Rate Benchmarks, Discount Rates, Inputs, Electricity, and Land Benchmarks
X. Use of Facts Otherwise Available and Application of Adverse Inferences
XI. Analysis of Programs
XII. Verification
XIII. Disclosure and Public Comment
XIV. Conclusion

Appendix II

Non-Selected Companies Under Review

1. Baoding Jiasheng Photovoltaic Technology Co., Ltd.
2. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
3. Beijing Tianneng Yingli New Energy Resources Co., Ltd.
4. Canadian Solar (USA) Inc.
5. Changzhou Trina Solar Energy Co., Ltd.
6. Changzhou Trina Solar Yabang Energy Co., Ltd.
7. Chint Solar (Zhejiang) Co., Ltd.
8. Dongguan Sunworth Solar Energy Co., Ltd.
9. ERA Solar Co. Limited
10. ET Solar Energy Limited
11. Hainan Yingli New Energy Resources Co., Ltd.
12. Hangzhou Sunny Energy Science and Technology Co., Ltd.
13. Hengdian Group DMEGC Magnetics Co., Ltd.
14. Hengshui Yingli New Energy Resources Co., Ltd.
15. JA Solar Technology Yangzhou Co., Ltd.
16. JA Technology Yangzhou Co., Ltd.
17. Jiangsu High Hope Int'l Group
18. Jiawei Solarchina (Shenzhen) Co., Ltd.
19. Jiawei Solarchina Co., Ltd.
20. JingAo Solar Co., Ltd.
21. Jinko Solar (U.S.) Inc.
22. Jinko Solar International Limited
23. Lightway Green New Energy Co., Ltd.
24. Lixian Yingli New Energy Resources Co., Ltd.
25. Luoyang Suntech Power Co., Ltd.
26. Nice Sun PV Co., Ltd.
27. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
28. Risen Energy Co., Ltd.
29. Shanghai BYD Co., Ltd.
30. Shanghai JA Solar Technology Co., Ltd.
31. Shenzhen Glory Industries Co., Ltd.
32. Shenzhen Topray Solar Co., Ltd.
33. Sumec Hardware & Tools Co., Ltd.
34. Systemes Versilis, Inc.
35. Taizhou BD Trade Co., Ltd.
36. tenKsolar (Shanghai) Co., Ltd.
37. Tianjin Yingli New Energy Resources Co., Ltd.
38. Toenergy Technology Hangzhou Co., Ltd.
39. Trina Solar (Changzhou) Science & Technology Co., Ltd.
40. Wuxi Suntech Power Co., Ltd.
41. Yancheng Trina Solar Energy Technology Co., Ltd.
42. Yingli Energy (China) Co., Ltd.
43. Yingli Green Energy Holding Company Limited
44. Yingli Green Energy International Trading Company Limited
45. Zhejiang Era Solar Technology Co., Ltd.
46. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

[FR Doc. 2019–02787 Filed 2–19–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) finds that certain companies covered by this administrative review made sales of chlorinated isocyanurates from the People's Republic of China (China) at less than normal value during the period of review (POR) June 1, 2016, through May 31, 2017.

DATES: Applicable February 20, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Carey, 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) 482–3964.

Background

This administrative review covers three producers/exporters: (1) Heze Huayi Chemical Co. Ltd. (Heze Huayi); (2) Hebei Jiheng Chemical Co. Ltd. (Jiheng); and (3) Juancheng Kangtai Chemical Co. Ltd. (Kangtai). We determine that Heze Huayi and Kangtai have demonstrated their eligibility for a separate rate, and have made sales in the United States at prices below normal value (NV). With respect to Jiheng, we continue to treat this company as part of the China-wide entity, because it did not participate in this administrative review and failed to respond to our questionnaires.

On July 10, 2018, the Department of Commerce (Commerce) published its *Preliminary Results* of the administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (China).[1] We invited parties to comment on our *Preliminary Results.* On August 16, 2018, the petitioners, Bio-lab, Inc., Clearon Corp., and Occidental Chemical Corp. (collectively, the petitioners) and the respondents, Heze Huayi and Kangtai (collectively, the respondents), submitted case briefs.[2] On August 21, 2018, the petitioners and the respondents submitted rebuttal briefs.[3]

On October 30, 2018, Commerce fully extended the deadline for the final results until January 4, 2019.[4] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[5] This extended the deadline for the final results to February 13, 2019.

Scope of the Order

The products covered by the order are chloro isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of merchandise subject to the scope is dispositive. For a full description of the scope of the order, *see* Issues and Decision Memorandum.[6]

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 31953 (July 10, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* ''Case Brief of Bio-lab, Inc., Clearon Corp. and Occidental Chemical Corporation,'' dated August 16, 2018 (Petitioners' Case Brief); and, ''Chlorinated Isocyanurates from the People's Republic of China: Case Brief,'' dated August 16, 2018 (Respondents' Case Brief).

[3] *See* ''Rebuttal Brief of Biolab, Inc., Clearon Corp. and Occidental Chemical Corporation,'' dated August 21, 2018 (Petitioners' Rebuttal Brief); and, ''Chlorinated Isocyanurates from the People's Republic of China: Rebuttal Brief,'' dated August 21, 2018 (Respondents' Rebuttal Brief).

[4] *See* Memorandum to James Maeder, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' (October 30, 2018).

[5] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[6] *See* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from China; 2016–2017,'' issued concurrently with this notice for a complete description of the scope of the Order.

Separate Rates

In the *Preliminary Results,* we found that evidence provided by Heze Huayi and Kangtai supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to each of these companies.[7] We received no information since the issuance of the *Preliminary Results* that provides a basis for reconsidering these determinations with respect to Heze Huayi and Kangtai. Therefore, for the final results, we continue to find that Heze Huayi and Kangtai are eligible for separate rates. Because Jiheng failed to respond to Commerce's questionnaires, we continue to determine for these final results that Jiheng is part of the China-wide entity.[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an 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* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made one change to our margin calculations to correct the calculation of Heze Huayi's and Kangtai's value-added taxes. The final dumping margins for this review are listed below.

Final Results of Administrative Review

As explained above, we find Jiheng to be part of the China-wide entity. The rate previously established for the China-wide entity is 285.63 percent.[9] The weighted-average dumping margins for Heze Huayi and Kangtai in the instant administrative review are as follows:

Exporter	Weight-average dumping margin percentage
Heze Huayi Chemical Co., Ltd ...	33.63
Juancheng Kangtai Chemical Co., Ltd	40.28

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[10] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[11] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[12] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[13]

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate. Additionally, if Commerce determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide entity rate.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative 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 the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing producer/exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be eligible for a separate rate, the cash deposit rate will be the China-wide rate of 285.63 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed regarding these final results within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

[7] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum, at 3–5.

[8] Because no interested party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity. Thus, the rate for the China-wide entity is not subject to change as a result of this review. *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, 65969–70 (November 4, 2013).

[9] For an explanation on the derivation of the China-wide rate, *see Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

[10] *See* 19 CFR 351.212(b)(1).

[11] *Id.*

[12] *Id.*

[13] *See* 19 CFR 351.106(c)(2).

[14] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 has occurred and that subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: February 12, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Issues
- Comment 1: Selection of the Primary Surrogate Country
- Comment 2: Whether To Use the EMIM Mexican Labor Data Instead of ILO Mexican Labor Rate
- Comment 3: Selection of Mexican Surrogate Value Record Over the Brazilian and Bulgarian Surrogate Value Record
- A. Financial Statements
- B. Surrogate Value for Sodium Hydroxide (Caustic Soda)
- C. Other Bulgarian Surrogate Values
- D. Other Brazilian Surrogate Values
- Comment 4: Adjustment to Export Price for Free-of-Charge Packing Materials
- Comment 5: Calculation of Value-Added Tax (VAT) Expenses
- Comment 6: Assigning the NME-Entity Rate to Jiheng

Recommendation

[FR Doc. 2019–02782 Filed 2–19–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

DATES: Applicable February 20, 2019.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, 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) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2018, the Department of Commerce (Commerce) published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[1] Pursuant to requests from interested parties, and in accordance with section 751(a) of the Tariff Act of 1930, amended (the Act), Commerce published in the **Federal Register** the notice of initiation of an antidumping duty administrative review with respect to the following companies covering the period July 1, 2017, through June 30, 2018:

Agritalia S.r.L. (Agritalia), Francesco Tamma S.p.A. (Tamma), Ghigi 1870 S.p.A. (Ghigi), Ghigi Industria Agroalimentare in San Clemente S.r.l., Pasta Zara S.p.A. (Zara), Industria Alimentare Colavita S.p.A. (Indalco), La Molisana S.p.A. (La Molisana), and Tesa SrL (Tesa).[2]

On October 1, 2018, Tamma timely withdrew its request for a review.[3] On November 9, 2018, La Molisana timely withdrew its request for a review.[4] No other party requested an administrative review of these particular companies.

Partial Rescission of the 2017–2018 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. All of the aforementioned withdrawal requests were timely submitted and no other interested party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice,[5] we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Tamma and La Molisana.

The instant review will continue with respect to the following companies: Agritalia, Ghigi/Zara,[6] Indalco, and Tesa.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, Tamma and La Molisana, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2017, through June 30, 2018, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 31121 (July 3, 2018).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018) (*Initiation Notice*).

[3] *See* Letter from Tamma to Commerce, ''Certain Dry Pasta from Italy, A–475–818—Withdrawal of Administrative Review Request of Francesco Tamma S.p.A.,'' dated October 1, 2018.

[4] *See* Letter from La Molisana to Commerce, ''Certain Dry Pasta from Italy A–475–818; Withdraw Request for Review,'' dated November 9, 2018.

[5] *See, e.g., Certain Lined Paper Products from India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review,* 74 FR 7218 (February 13, 2009).

[6] In the 2015–2016 antidumping duty administrative review of certain pasta from Italy, Commerce determined that Ghigi 1870 S.p.A. was formerly known as Ghigi Industria Agroalimentare in San Clemente S.r.l. We also collapsed Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively, Ghigi/Zara). *See Certain Pasta From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 36126 (August 3, 2017), unchanged in *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 57428 (December 5, 2017).

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: February 14, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–02786 Filed 2–19–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

DATES: Applicable February 20, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: On October 18, 2018, the Department of Commerce (Commerce), pursuant to section 702(h) of the Trade Agreements Act of 1979 (as amended) (the Act), published the quarterly update to the annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period April 1, 2018, through June 30, 2018.[1] In the *Second Quarter 2018 Update,* we requested that any party that has information on foreign government subsidy programs that benefit articles of cheese subject to an in-quote rate of duty submit such information to Commerce.[2] We received no comments, information or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce's update of subsidies on articles of cheese that were imported during the period July 1, 2018, through September 30, 2018. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed. Commerce encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: February 13, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY

Country	Program(s)	Gross[3] subsidy ($/lb)	Net[4] subsidy ($/lb)
28 European Union Member States[5]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.46	0.46
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2019–02785 Filed 2–19–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty,* 83 FR 52808 (October 18, 2018) (Second *Quarter 2018 Update*).

[2] *Id.*

[3] Defined in 19 U.S.C. 1677(5).

[4] Defined in 19 U.S.C. 1677(6).

[5] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; 2013–2014: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On December 21, 2018, the United States Court of International Trade (Court) issued a final judgment in *Qingdao Qihang Tyre Co., Ltd., et al.* v. *United States,* Consol. Court No. 16–00075; Slip Op. 18–176 (CIT Dec. 21, 2018) (*Qihang Tyre*), sustaining the Department of Commerce's (Commerce) remand results for the sixth administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China) covering the period of review (POR) September 1, 2013, through August 31, 2014. Commerce is notifying the public that the Court has made a final judgment that is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to certain exporters identified herein.

DATES: Applicable December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, 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) 482–5139.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2016, Commerce issued its *Final Results* [1] in the sixth administrative review of the order on OTR tires from China. Between April 29, 2016, and May 12, 2016, the plaintiffs in this litigation, consisting of the two mandatory respondents, Qingdao Qihang Tyre Co., Ltd. (Qihang) and Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Co. Ltd., and Xuzhou Hanbang Tyre Co., Ltd. (collectively, Xugong), and the following separate rate respondents, Qingdao Free Trade Zone Full-World International Trading Co., Ltd. (Full World), Trelleborg Wheel Systems (Xingtai) Co., Ltd. (TWS Xinghai), and Weihai Zhongwei Rubber Co., Ltd. (Weihai Zhongwei) timely filed complaints with the Court challenging certain aspects of Commerce's *Final Results.*[2] On May 31, 2016, domestic interested parties Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC intervened as defendant-intervenors but withdrew from these cases on September 29, 2017.[3]

On April 4, 2018, the Court remanded Commerce's *Final Results.*[4] In its remand redetermination, Commerce (1) recalculated, under protest, export price and constructed export price for Xugong's and Qihang's sales without making downward adjustments for Chinese irrecoverable value added taxes (VAT); (2) reconsidered its surrogate value for reclaimed rubber and determined that Romanian import price data, obtained from the Global Trade Atlas, constituted the best available information; and (3) redetermined its surrogate value for foreign inland freight, using the World Bank's *Doing Business 2016: Thailand* report in place of the 2015 version of that report that Commerce used in the *Final Results.*[5] After accounting for all such changes and issues in the *Qihang Tyre* remand, the resulting antidumping duty margins are 13.93 percent for Qihang and 23.45 percent for Xugong.[6] Because Commerce calculated margins for unexamined respondents eligible for a separate rate using the weighted-average dumping margins of the two mandatory respondents in the underlying administrative review,[7] we have recalculated the margin for the separate rate respondents who are parties to this litigation.[8] The recalculation resulted in a margin of 20.03 percent for TWS Xingtai, Full World, and Zhongwei.[9] On December 21, 2018, the Court sustained the *Qihang Tyre* remand results.[10]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results of the administrative review of the antidumping duty order on OTR tires from China covering the POR. Thus, Commerce is amending the *Final Results* with respect to the weighted-average dumping margins for the mandatory respondents, and the separate rate respondents who are parties to this litigation, as listed above.

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's December 21, 2018, judgment sustaining the *Qihang Tyre* remand results constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* As such, Commerce has published this notice in fulfillment of the publication requirement of *Timken.*

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 23272 (April 20, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See Qingdao Qihang Tyre Co., Ltd., et al.* v. *United States,* Consol. Court No. 16–00075; Slip Op. 18–35 (CIT April 4, 2018) (*Qihang Tyre*), at *4.

[3] *Id.* at n.2.

[4] *Id.* at 61.

[5] *See* Final Results of Redetermination Pursuant to Ct. Remand at 2, *Qingdao Qihang Tyre Co., Ltd., et al.* v. *United States,* Consol. Court No. 16–00075; Slip Op. 18–35 (CIT 2018), dated July 24, 2018 (Remand Results).

[6] *See* memoranda, ''Draft Results of Redetermination Pursuant to Court Remand in the 2013–14 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Remand Analysis Memorandum for Xuzhou Xugong Tyres Co.,'' dated June 12, 2018 (Xugong Draft Results Analysis Memo) at 2, ''Draft Results of Redetermination Pursuant to Court Remand in the 2013–14 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Remand Analysis Memorandum for Qingdao Qihang Tyre Co.,'' dated June 12, 2018 (Qihang Draft Results Analysis Memo).

[7] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 61166 (October 9, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM) at 10–12, unchanged in the *Final Results.*

[8] *See* memorandum, ''Draft Results of Redetermination Pursuant to Court Remand in the 2013–2014 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Results Margin Calculation for Separate Rate Companies,'' dated June 12, 2018 (Draft Remand SR Memo).

[9] *Id.*

[10] *See Qingdao Qihang Tyre Co., Ltd., et al.* v. *United States,* Consol. Court No. 16–00075; Slip Op. 18–176 (CIT Dec. 21, 2018).

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to the mandatory respondents, and the separate rate respondents who are parties to this litigation. The revised weighted-average dumping margins for these exporters during the period September 1, 2013, through August 31, 2014, are as follows:

Exporter	Weighted-average dumping margin (percent)
Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Company Ltd., or Xuzhou Hanbang Tyre Co., Ltd	23.45
Qingdao Qihang Tyre Co., Ltd	13.93
Qingdao Free Trade Zone Full-World International Trading Co., Ltd	20.03
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd	20.03
Weihai Zhongwei Rubber Co., Ltd	20.03

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the end of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, and upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies identified above using the assessment rate calculated by Commerce in the *Qihang Tyre* remand results, as listed in the above table.

Cash Deposit Requirements

Unless the applicable cash deposit rates have been superseded by cash deposit rates calculated in an intervening administrative review of the antidumping duty order on OTR tires from China, Commerce will instruct CBP to require a cash deposit for estimated antidumping duties at the rate noted above for each specified exporter, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after December 31, 2018.

Notification to Interested Parties

Commerce has issued and published this notice in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 13, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–02784 Filed 2–19–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive (exclusive with respect to the field of Injection Molding for sales of shaped materials to customers with the final shape either machined or modified by the end user) patent license agreement to Strong Plastics, LLC, a corporation of the State of Ohio, having a place of business at 328 Birchbrook Ct., Dayton, OH 45458.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Room 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. 938 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy M. Barlow, (937) 904–5760, Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant the partially exclusive patent license agreement for the invention described in:

—U.S. Patent No. 8,092,894, entitled, ''High Strength Polymerics,'' filed 5 May 2008, and issued 10 January 2012.

Authority: 35 U.S.C. 209; 37 CFR 404.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Carlinda Lotson,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–02749 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2018–HQ–0013]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 22, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: ArmyFit; OMB Control Number 0702–XXXX.

Type of Request: New information collection request.

Number of Respondents: 1,700.

Responses per Respondent: 1.

Annual Responses: 1,700.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 425.

Needs And Uses: This collection supports the mission of the Army Resiliency Directorate (ARD), HQDA G–1, to improve the readiness of the force and quality of life for service members. ARD owns the Army Fitness Platform (ArmyFit). ArmyFit hosts the Global

Assessment Tool (GAT), which is an assessment promoting self-development through its user feedback and enables the creation of a customized ArmyFit profile which directs individuals to tailored self-development and training resources for soldiers, their families, and Army civilians. ArmyFit is a self-appraisal survey for assessing an individual's fitness in dimensions of strength: Physical, emotional, social, spiritual, and family. It is a tool for building resilience. The survey is taken by all soldiers and offered to family members, Army Civilians, and contractors.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–02811 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense Military Family Readiness Council, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of Defense Military Family Readiness Council will take place.

DATES: Open to the public, Tuesday, March 19, 2019 from 10:00 a.m. to 12:00 p.m. ADDRESSES: The address of the open meeting is the Pentagon, 1155 Defense Pentagon PLC2, Pentagon Library and Conference Center, Room B6, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: William Story, (571) 372–5345 (Voice), (571) 372–0884 (Facsimile), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address is Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), Office of Family Readiness Policy, 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Website: *http://www.militaryonesource.mil/those-who-support-mfrc.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: This is the second meeting of the Council for Fiscal Year 2019 (FY2019). During this meeting, subject matter experts will present information to the Council concerning Accessions and Medical Record Policies and Procedures: Impact on Military Children Who Received Mental and Behavioral Health Services, the second of two focus areas chosen by the Council for FY2019.

Agenda: Opening Remarks, Status Updates, Administrative Issues, Review of Written Public Submissions, Overview and Background, Accessions Policies and Procedures, Tricare Medical Records Policies and Procedures, Future Implications Related to Medical Records, Q&A Session and Council Member Discussion, Closing Remarks. **Note:** Exact order may vary.

Meeting Accessibility: This meeting is open to the public. Members of the public who are interested in attending this meeting must RSVP online to *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* no later than March 12, 2019. Meeting attendee RSVPs should indicate if an escort is needed to the meeting location (non-CAC Card holders need an escort) and if handicapped accessible transportation is needed. All visitors without CAC cards that are attending the MFRC must pre-register prior to entering the Pentagon. RSVPs to the MFRC mailbox needing escort to the meeting will be contacted by email from the Pentagon Force Protection Agency (PFPA) with instructions for registration. Please follow these instructions carefully. Otherwise, members of the public may be denied access to the Pentagon on the day of the meeting. Members of the public who are approved for Pentagon access should arrive at the Pentagon Visitors Center waiting area (Pentagon Metro Entrance) no later than 9:00 a.m. on the day of the meeting to allow time to pass through security check points and be escorted to the meeting location. Contact Eddy Mentzer, (571) 372–0857 (Voice), (571) 372–0884, (Facsimile) if you have any questions about your RSVP.

Written Statements: Persons interested in providing a written statement for review and consideration by Council members attending the March 19, 2019 meeting must do so no later than close of business Tuesday, March 5, 2019, through the Council mailbox at *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil.* Written statements received after this date will be provided to Council members in preparation for the third MFRC meeting of FY2019. The Designated Federal Officer (DFO) will review all timely submissions and ensure submitted written statements are provided to Council members prior to the meeting that is subject to this notice. Written statements must not be longer than two type-written pages and should address the following details: Issue or concern, discussion, and a recommended course of action. Those who make submissions are requested to avoid including personally identifiable information (PII) such as names of adults and children, phone numbers, addresses, social security numbers and other contact information within the body of the written statement. Links or supporting documentation may also be included, if necessary, to provide brief appropriate historical context and background information.

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–02818 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Science Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Day 1—Closed to the public Wednesday April 17, 2019 from 8:00 a.m. to 5:00 p.m. Day 2—Closed to the public Thursday April 18, 2019 from 8:00 a.m. to 3:00 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Lt Col Milo W. Hyde, III, U.S. Air Force, (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *milo.w.hyde2.mil@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C.), Appendix), the Government in the Sunshine Act (Title 5 U.S.C., Section 552b), and Title 41 Code of Federal Regulations (CFR), Sections 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet to discuss the 2019 DSB Summer Study on the Future of U.S Military Superiority (''the DSB Summer Study'').

Agenda: The DSB Summer Study meeting will begin on April 17, 2019 at 8:00 a.m. with opening remarks by Lt Col Milo Hyde, the Designated Federal Officer, and Dr. Craig Fields, DSB Chairman. Next, the DSB members will meet in small groups to discuss classified ways in which the DoD can secure U.S. interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. Finally, the members of the study will meet in a plenary session to discuss classified ways in which the DoD can secure U.S interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. The meeting will adjourn at 5:00 p.m. On April 18, 2019, the members of the study will meet in small groups beginning at 8:00 a.m. to discuss classified ways in which the DoD can secure U.S. interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. Next, the members of the study will meet in a plenary session to discuss classified ways in which the DoD can secure U.S. interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. The meeting will adjourn at 3:00 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and Title 41 CFR, Section 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by Title 5 U.S.C., Section 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering)

Written Statements: In accordance with Section 10(a)(3)of the FACA and Title 41 CFR, Sections 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided above at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–02810 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0098]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 22, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Joshua Brammer, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Preservation of the Force and Family (POTFF) Spiritual Fitness Metrics, 0720–XXXX.

Type of Request: New collection.

Number of Respondents: 8,012.

Responses per Respondent: 1.

Annual Responses: 8,012.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 2,670.

Needs and Uses: The information collection requirement is necessary to develop and validate measures of Spiritual Fitness and Performance in line with the Chairman of the Joint Chiefs of Staff Instruction on Total Force Fitness. This measure will be used by US Special Operations Command's (USSOCOM) Preservation of the Force and Family's (POTFF) Spiritual Performance Team to evaluate

programs that enhance spiritual performance.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Joshua Brammer.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–02821 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Defense Advisory Committee on Military Personnel Testing, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Military Personnel Testing will take place.

DATES: Day 1—Open to the public Thursday March 28, 2019 from 9:00 a.m. to 4:15 p.m. Day 2—Open to the public Friday March 29, 2019 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The Pine Inn, Ocean Avenue, between Lincoln and Monte Verde Street, Carmel-By-The-Sea, California 93923.

FOR FURTHER INFORMATION CONTACT: Sofiya Velgach, (703) 697–9271 (Voice), (703) 614–9272 (Facsimile), *sofiya.velgach.civ@mail.mil* (Email). Mailing address is Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Agenda: The agenda includes an overview of current enlistment test development timelines, test development strategies, and planned research for the next 3 years. Committee's Point of Contact: Dr. Sofiya Velgach, Assistant Director, Enlistment Testing Standards, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized tests for military enlistment screening.

Agenda: March 28, 2019 0900–0915 Welcome and Opening Remarks Dr. Sofiya Velgach, OASD(M&RA)AP* 0915–0945 Accession Policy Update Chris Arendt, Deputy Director, AP 0945–1030 CEP Update Dr. Shannon Salyer DPAC/OPA 1030–1045 Break 1045–1115 Milestones and Project Schedules Dr. Mary Pommerich DPAC/OPA 1115–1200 ASVAB Evaluation Plan Dr. Mary Pommerich, DPAC/OPA 1200–1230 CAT–ASVAB New Forms Update Dr. Matt Trippe, HumRRO 1230–1330 Lunch—''Dining Room'' 1330–1415 Mental Counters—Rapid Guessing Behavior Dr. Ping Yin HumRRO 1415–1500 Mental Counters Think Aloud Plan Dr. Ping Yin HumRRO 1500–1515 Break 1515–1600 CAT-Cyber Test Dr. Furong Gao HumRRO 1600–1615 Public Comments 1615–1730 Executive Session Dr. Michael Rodriguez, Chair March 29, 2019 0900–0930 Adverse Impact for Special Tests Dr. Greg Manley DPAC/OPA 0930–1015 Device Evaluation Dr. Tia Fechter, DPAC/OPA 1015–1045 AVID Initial Evaluation Dr. Kristina Kirkendall ARI 1045–1100 Break 1100–1145 ASVAB Time Limits Dr. Furong Gao HumRRO 1145–1215 TAPAS Review Update Dr. Tim McGonigle HumRRO 1215–1230 Future Topics Dr. Dan Segall DPAC/OPA 1230–1245 Public Comments 1245–1300 Closing Comments Dr. Michael Rodriguez, Chair.

Abbreviations Key

ARI = Army Research Institute
ASVAB = Armed Services Vocational Aptitude Battery
AVID = Adaptive Vocational Interest Diagnostic
CAT = Computerized Adaptive Testing
CEP = Career Exploration Program, provided free to high schools nation-wide to help students develop career exploration skills and used by recruiters identify potential applicants for enlistment
DPAC/OPA = Defense Personnel Assessment Center/Office of People Analytics
HumRRO = Human Resources Research Organization
JAMRS = Joint Advertising Market Research & Studies
OASD(M&RA)/AP = Office of the Assistant Secretary of Defense (Manpower & Reserve Affairs)/Accession Policy
TAPAS = Tailored Adaptive Personality Assessment System

Meeting Accessibility: Public's Accessibility to the Meeting: Pursuant to title 5, U.S.C., section 552b and title 41, Code of Federal Regulations, sections 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is based on first-come, first-served basis. All members of the public who wish to attend the public meeting must contact the Designated Federal Officer, not later than 12:00 p.m. on Monday, March 11, 2019, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Committee's Point of Contact: Dr. Sofiya Velgach, Assistant Director, Enlistment Testing Standards, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the Committee at any time about its approved agenda or at any time on the Committee's mission. Written statements should be submitted to the Committee's Designated Federal Officer at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received

after this date may not be provided to or considered by the Committee until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the Committee operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection. Opportunity for public comments will be provided at the end of the meeting. Public comments will be limited to 5 minutes per person, as time allows.

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–02820 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Science Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Day 1—Closed to the public Wednesday March 20, 2019 from 8:00 a.m. to 5:00 p.m.

Day 2—Closed to the public Thursday March 21, 2019 from 8:00 a.m. to 3:00 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Milo W. Hyde, III, U.S. Air Force, (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *milo.w.hyde2.mil@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C), Appendix), the Government in the Sunshine Act (Title 5 U.S.C., Section 552b), and Title 41 Code of Federal Regulations (CFR), Sections 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet to discuss the 2019 DSB Summer Study on the Future of U.S Military Superiority (''the DSB Summer Study'').

Agenda: The DSB Summer Study meeting will begin on March 20, 2019 at 8:00 a.m. with opening remarks by Lt. Col. Milo Hyde, the Designated Federal Officer, and Dr. Craig Fields, DSB Chairman. Next, the DSB members will meet in small groups to discuss classified ways in which the DoD can secure U.S. interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. Finally, the members of the study will meet in a plenary session to discuss classified ways in which the DoD can secure U.S interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. The meeting will adjourn at 5:00 p.m. On March 21, 2019, the members of the study will meet in small groups beginning at 8:00 a.m. to discuss classified ways in which the DoD can secure U.S. interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. Next, the members of the study will meet in a plenary session to discuss classified ways in which the DoD can secure U.S. interests, manage escalation, and deter and counter adversary aggression, given a renewed great power competition. The meeting will adjourn at 3:00 p.m.

Meeting Accessibility: In accordance with section 10(d) of the FACA and Title 41 CFR, Section 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by Title 5 U.S.C., Section 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

Written Statements: In accordance with section 10(a)(3)of the FACA and Title 41 CFR, Sections 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided above at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–02808 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement for the New Jersey Back Bay Coastal Storm Risk Management Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent; withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, Philadelphia District, Planning Division is notifying interested parties that it has withdrawn the Notice of Intent (NOI) to develop an EIS for the proposed New Jersey Back Bay (NJBB) Coastal Storm Risk Management (CSRM) Feasibility Study. The original NOI to Prepare an EIS was published in the **Federal Register** on Wednesday, December 27, 2017.

ADDRESSES: U.S. Army Corps of Engineers, Philadelphia District, Environmental Resources Branch, (CENAP–PL–E), 100 Penn Square East, Wanamaker Building, Philadelphia, PA 19107–3390.

FOR FURTHER INFORMATION CONTACT: Questions regarding the withdrawal of this NOI should be addressed to Mr. Steven D. Allen, 215–656–6559, or *Steven.D.Allen@usace.army.mil.*

SUPPLEMENTARY INFORMATION: On March 20, 2018, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued an OMB/CEQ Memorandum for Heads of Federal Departments and Agencies titled ''One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order [E.O.] 13807.'' Additionally, twelve federal agencies, including Department of the Army, signed a Memorandum of Understanding (MOU) as an appendix to the OMB/CEQ Memorandum. The MOU is titled ''Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807'' and was effective on April 10, 2018. E.O. 13807 sets a goal for agencies by reducing the time for completing environmental reviews and authorization decisions to an agency average of not more than two years from publication of a NOI to prepare an EIS.

Subsequent to the publication of the NOI, the NJBB CSRM Feasibility Study was granted an exemption from the requirement to complete the feasibility study within 3 years, as required in Section 1001(a) of the Water Resources Reform and Development Act of 2014. This exemption was granted on October 31, 2018 on an interim basis, and allows for an additional 17 months to complete the Agency Decision Milestone. Therefore, in order to align the revised study schedule with E.O. 13807, it is necessary to withdraw the existing NOI to develop and re-scope a NEPA coordination/review schedule with the appropriate Federal and state resource agencies that have statutory jurisdiction over the review process for any action being contemplated in the course of the feasibility study and development of an environmental impact statement. Public, agency and stakeholder comments and feedback will continue to be accepted during the re-scoping of the NEPA review schedule.

Dated: February 5, 2019.

Peter R. Blum,

Chief, Planning Division, U.S. Army Corps of Engineers, Philadelphia District.

[FR Doc. 2019–02803 Filed 2–19–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2018–HQ–0016]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Secretary of the Navy, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 22, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Ombudsman; OMB Control Number 0703–XXXX.

Type of Request: New Information Collection Request.

Number of Respondents: 4,500.

Responses per Respondent: 1.

Annual Responses: 4,500.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,250.

Needs and Uses: The information collection requirement is necessary to identify all Navy ombudsmen; provide them with program information; communicate during natural disasters and crisis; collect program contact numbers and workload data; and maintain records of program training received. Numbers provided from the collection help identify the issues and concern of the families, trends during deployment and identify training which may be beneficial to the command families.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–02825 Filed 2–19–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, March 26, 2019; 8:30 a.m. to 5:00 p.m., and Wednesday, March 27, 2018; 9:00 a.m. to 12:00 noon.

ADDRESSES: Cambria Hotel Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Christine Chalk, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW; Washington, DC 20585–1290; Telephone (301) 903–7486

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and guidance on a continuing basis to the Office of Science and the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda Topics

- View from Washington
- View from Germantown
- Update on Exascale project activities
- Report from Subcommittee on 40 years of investments by the Department of Energy in advanced computing and networking
- Updated Report from Future Computing Technologies Subcommittee
- Update from new subcommittee on Exascale transition
- Sexual Harassment: Climate, Culture, and Consequence in Academia
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the budget, accomplishments and planned activities of the Advanced Scientific Computing Research program and the exascale computing project; an update from the Office of Science; technical presentations from funded researchers; updates from subcommittees and there will be an opportunity for comments from the public. The meeting will conclude at 12:00 noon on March 27, 2019. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: *http://science.energy.gov/ascr/ascac/.*

Public Participation: The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit your request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk at the address above or, email to: *Christine.Chalk@science.doe.gov.*

Minutes: The minutes of this meeting will be available for review within 90 days on the Department of Energy's Office of Advanced Scientific Computing website at: *http://science.energy.gov/ascr/ascac/.*

Signed in Washington, DC, on February 13, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–02796 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Bonneville Power Administration, U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: Bonneville Power Administration (BPA) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will allow BPA to exercise management and oversight over the personal security of the public and physical security of its facilities. Incidents of property damage and loss are also reported and managed using these collections.

DATES: Comments regarding this collection must be received on or before March 22, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503.

And to: Written comments may be submitted by mail to Laura McCarthy, CGI–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, or by email at *ljmccarthy@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information may be requested from Laura McCarthy at the mailing address above or by email at *ljmccarthy@bpa.gov* or via telephone at (503) 230–3223.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* New; (2) *Information Collection Request Title:* Security; (3) *Type of Request:* New Collection; (4) *Purpose:* This Information Collection allows BPA to exercise management and oversight over the personal security of the public and physical security of its facilities; incidents of property damage and loss are also reported and managed using these collections; (5) *Annual Estimated Number of Respondents:* 9,642; (6) *Annual Estimated Number of Total Responses:* 9,642; (7) *Annual Estimated Number of Burden Hours:* 1,749; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: The Bonneville Project Act, codified at 16 U.S.C. 832; and the following additional authorities:

BPA F 5632.01, Security Incident Report: FERC Order No. 706, sec. 343, pg. 98.

BPA F 5632.08, Unclassified Visits and Assignments—Foreign Nationals Registration (Short Form): E.O. 12333 (December 4, 1981); E.O. 13284 (January 23, 2003); E.O. 13470, (July 30, 2008); FERC Order No. 706 sec. 343, pg. 98.

BPA F 5632.09, Personal Identity Verification (PIV) Request: Information Sheet for Sponsorship of DOE Security Badge or LSSO: E.O. 13467 (April 27, 1953). E.O. 13488 (January 16, 2009); E.O. 13764, (January 17, 2017); Federal Information Processing Standard Publication 201–2 (FIPS 201–2), and Homeland Security Presidential Directive 12 (HSPD 12).

BPA F 5632.11, BPA Visitor(s) Access Request: 42 U.S.C. 2165; FERC Order No. 706 sec. 343, pg. 98.

BPA F 5632.12, Evidence/Property Custody Document: 42 U.S.C. 2165; FERC Order No. 706 sec. 343, pg. 98.

BPA F 5632.18 Crime Witness Telephone Report: FERC Order No. 706, sec. 343, pg. 98.

BPA F 5632.27, Badge Replacement Form: Federal Information Processing Standard Publication 201–2 (FIPS 201–2) and Homeland Security Presidential Directive 12 (HSPD 12).

BPA F 5632.30, Pin Code Request: Federal Information Processing Standard Publication 201–2 (FIPS 201–2) and Homeland Security Presidential Directive 12 (HSPD 12).

BPA F 5632.32, Card Key Access Request: 42 U.S.C. 2165; FERC Order No. 706 sec. 343, pg. 98.

Signed on January 30, 2019.

Candice D. Palen,

Acting Manager, Information Governance.

[FR Doc. 2019–02802 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–257–E]

Application To Export Electric Energy; Emera Energy Services, Inc.

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Inc. (Applicant or EES) has applied to renew its authorization to transmit electric

energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 22, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On April 17, 2014, DOE issued Order No. EA–257–D, which authorized EES to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expires on April 5, 2019. On February 22, 2018, EES filed an application with DOE for renewal of the export authorization contained in Order No. EA–257–D for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by EES have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning EES's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–257–E. An additional copy is to be provided directly to both Michael G. Henry, Emera Energy Services, Inc., 101 Federal St., Suite 1101, Boston, MA 02110, and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 11, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–02792 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee; Meeting

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, April 8, 2019; 8:30 a.m.–4:30 p.m.

ADDRESSES: Hilton Rockville, 1750 Rockville Pike, Roosevelt/Madison Room, Rockville, Maryland, (301) 468–1100.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–0536 or email: *brenda.may@science.doe.gov.* The most current information concerning this meeting can be found on the website: *http://science.gov/np/nsac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

- Perspectives from Department of Energy and National Science Foundation
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Office's
- Presentation and Discussion of the Mo-99 Report
- Update on the activities of the QIS Subcommittee
- Physics Priority Updates from the 2015 Long Range Plan
- NSAC Business/Discussions

Note: The NSAC Meeting will be broadcast live on the internet. You may find out how to access this broadcast by going to the Office of Science website at *http://science.gov/np/nsac/meetings/* prior to the start of the meeting. A video record of meeting including the presentations that are made will be archived at this site after the meeting.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, telephone: (301) 903–0536 or email: *Brenda.May@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for review on the U.S. Department of Energy's Office of Nuclear Physics website at *http://science.gov/np/nsac/meetings/.*

Signed in Washington, DC, on February 13, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–02799 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–391–A]

Application To Export Electric Energy; Emera Energy Services Subsidiary No. 6 LLC

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 6 LLC (Applicant or EESS–6) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 22, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 16, 2014, DOE issued Order No. EA–391, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expires on May 16, 2019. On February 22, 2018, EESS–6 filed an application with DOE for renewal of the export authorization contained in Order No. EA–391 for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by EESS–6 have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning EESS–6's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–391–A. An additional copy is to be provided directly to both Michael G. Henry, Emera Energy Services, Inc., 101 Federal St., Suite 1101, Boston, MA 02110, and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 11, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–02801 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site; Meeting

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), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, March 25, 2019; 1:00 p.m.–5:00 p.m. Tuesday, March 26, 2019; 9:00 a.m.–5:00 p.m.

ADDRESSES: Partridge Inn, 2110 Walton Way, Augusta, Georgia 30904.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120.

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, March 25, 2019

Opening, Chair Update, and Agenda Review
Agency Updates
Break
Administrative & Outreach Committee Update
Facilities Disposition & Site Remediation Committee Update
Nuclear Materials Committee Update
Strategic & Legacy Management Committee Update
Waste Management Committee Update
Break
Presentation: *Environmental Surveillance and Oversight Program of the S.C. Department of Health and Environmental Control (DHEC)*
Discussion of Draft Recommendations:
- Pollinator Management Program
- Savannah River Site National Environmental Research Park Support

Discussion on Integrated Priority List
Public Comments
Recess

Tuesday, March 26, 2019

Reconvene
Agenda Review
Update on Building 235–F Deactivated State:
- Risk Reduction Status
- Closure Activities

Lunch Break
H-Canyon and L-Basin Alternatives:
- Overview of Options for Operating H-Canyon

- H-Canyon 2024 and 2027 Scenario
- H-Canyon 2030 and 2040 Scenario
- Process of Closing Facilities: How Decisions Are Made
- Spent Nuclear Fuel Inventory

Public Comments

Voting:

- Letter Regarding Integrated Priority List
- Draft Recommendations:
  - Pollinator Management Program
  - Savannah River Site National Environmental Research Park Support

Adjourn

Public Participation: The meeting is open to the public. 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 phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Amy Boyette's office at the address or telephone listed above. Requests must be received five days 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.

Minutes: Minutes will be available by writing or calling Amy Boyette at the address or phone number listed above. Minutes will also be available at the following website: *http://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC on February 12, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–02797 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–287–C]

Application To Export Electric Energy; Emera Energy U.S. Subsidiary No. 1, Inc.

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy U.S. Subsidiary No. 1, Inc. (Applicant or EE US No. 1) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 22, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On April 17, 2014, DOE issued Order No. EA–287–B, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expires on April 19, 2019. On February 22, 2018, EE US No. 1 filed an application with DOE for renewal of the export authorization contained in Order No. EA–287–B for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by EE US No. 1 have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning EE US No. 1's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–287–C. An additional copy is to be provided directly to both Michael G. Henry, Emera Energy Services, Inc., 101 Federal St., Suite 1101, Boston, MA 02110, and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 11, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–02791 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–258–E]

Application To Export Electric Energy; Brookfield Energy Marketing Inc.

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Notice of application.

SUMMARY: Brookfield Energy Marketing Inc. (Applicant or BEMI) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 22, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for

more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On April 25, 2014, DOE issued Order No. EA–258–D, which authorized BEMI to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on April 23, 2019. On November 7, 2018, BEMI filed an application with DOE for renewal of the export authority contained in Order No. EA–258–D for an additional five-year term.

In its application, the Applicant states that it ''does not own generation or transmission assets and does not have a franchised electric power service area,'' and also ''has no native load obligations.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by BEMI have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning BEMI's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–258–E. An additional copy is to be provided directly to Ruth Teetzel, Brookfield Energy Marketing Inc., 41 Victoria Street, Gatineau, Quebec J8X 2A1.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 11, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–02800 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Efficient and Flexible Building Loads

AGENCY: Building Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) number regarding Efficient and Flexible Building Loads. Through this RFI, the U.S. Department of Energy (DOE) Building Technologies Office (BTO) seeks input from industry to better understand where flexible building loads research goals can be refined to reflect market needs and inform related R&D activities.

DATES: Responses to the RFI must be received by 5:00 p.m. (ET) on March 1, 2019.

ADDRESSES: Responses to this RFI must be submitted electronically to *RFI_GEB2019@ee.doe.gov.* Responses must be provided as attachments to an email. 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) attachment to the email, and no more than five (5) pages in length per category of questions, 12 point font, 1 inch margins. Only electronic responses will be accepted.

Please identify your answers by responding to a specific question or topic if applicable. Respondents may answer as many or as few questions as they wish.

DOE will not respond to individual submissions or publish publicly a compendium of responses. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Respondents are requested to provide the following information at the start of their response to this RFI:

- Company/institution name;
- Company/institution contact;
- Contact's address, phone number, and email address.

FOR FURTHER INFORMATION CONTACT: Question may be addressed to *RFI_GEB2019@ee.doe.gov* or to Monica Neukomm, (202) 845–3168. Further instructions can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, building owners and operators, builders, utilities, and other stakeholders on key issues related to the energy flexibility that building technologies can provide. This information will be used by BTO for strategic planning of the broader grid-interactive efficient building technologies R&D portfolio. This is solely a request for information and not a Funding Opportunity Announcement (FOA). DOE is not accepting applications. The RFI is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, respondents are strongly advised to NOT include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response as detailed in the RFI [DE–FOA–0002070] at: *https://eere-exchange.energy.gov/.*

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on January 30, 2019.

David Nemtzow,

Director of Building Technologies Office.

[FR Doc. 2019–02804 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–393–A]

Application To Export Electric Energy; Emera Energy Services Subsidiary No. 8 LLC

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 8 LLC (Applicant or EESS–8) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 22, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 16, 2014, DOE issued Order No. EA–393, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expires on May 16, 2019. On February 22, 2018, EESS–8 filed an application with DOE for renewal of the export authorization contained in Order No. EA–393 for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by EESS–8 have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning EESS–8's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–393–A. An additional copy is to be provided directly to both Michael G. Henry, Emera Energy Services, Inc., 101 Federal St., Suite 1101, Boston, MA 02110, and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 12, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–02790 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–392–A]

Application To Export Electric Energy; Emera Energy Services Subsidiary No. 7 LLC

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 7 LLC (Applicant or EESS–7) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 22, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 16, 2014, DOE issued Order No. EA–392, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term

using existing international transmission facilities. That authorization expires on May 16, 2019. On February 22, 2018, EESS–7 filed an application with DOE for renewal of the export authorization contained in Order No. EA–392 for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by EESS–7 have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning EESS–7's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–392–A. An additional copy is to be provided directly to both Michael G. Henry, Emera Energy Services, Inc., 101 Federal St., Suite 1101, Boston, MA 02110, and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 12, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–02789 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee; Meeting

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of NEAC. Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 28, 2019; 9:00 a.m.–4:30 p.m.

ADDRESSES: Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Bob Rova, Designated Federal Officer, U.S. Department of Energy, 19901 Germantown Rd., Germantown, MD 20874;

Telephone: (301) 903–9096; email: *robert.rova@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that provide the committee updates on activities for the Office of Nuclear Energy. The agenda may change to accommodate committee business. For updates, one is directed the NEAC website: *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Thursday, March 28, 2019. Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Bob Rova, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email *robert.rova@nuclear.energy.gov.*

Minutes: The minutes of the meeting will be available by contacting Mr. Rova at the address above or on the Department of Energy, Office of Nuclear Energy website at *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

Issued in Washington, DC, on February 13, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–02798 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Defense Programs Advisory Committee

AGENCY: Office of Defense Programs, National Nuclear Security Administration, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Federal Advisory Committee Act, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Defense Programs Advisory Committee (DPAC) will be renewed for a two-year period beginning on February 8, 2019.

The DPAC will provide advice and recommendations to the Deputy Administrator for Defense Programs on the stewardship and maintenance of the Nation's nuclear deterrent.

Additionally, the renewal of the Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory

Committee Act and the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Dana Hunter, Office of Defense Programs at (202) 287–6287.

Signed in Washington, DC, on February 8, 2019.

Rachael J. Beitler,

Acting Committee Management Officer.

[FR Doc. 2019–02807 Filed 2–19–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–42–000]

City Utilities of Springfield, Missouri; Notice of Petition for Limited Waiver

Take notice that on February 8, 2019, pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(5) and section 554(e) of the Administrative Procedure Act (5 U.S.C. 554(e)), City Utilities of Springfield, Missouri (Petitioner) filed a petition for the Commission to authorize a limited, one-time waiver of the financial security requirement set forth in Section 4.0 of the *pro forma* Sponsored Upgrade Agreement appearing as Schedule 1 to Attachment J of the Southwest Power Pool, Inc.'s Open Access Transmission Tariff, all as more fully explained in the petition.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Petitioner.

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 should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 1, 2019.

Dated: February 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02718 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12966–004]

Utah Board of Water Resources; Notice of Comment Period Extension

On December 19, 2018, the Commission issued a letter extending the reply comment period for the proposed Lake Powell Pipeline Project (P–12966–004) to January 18, 2019. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the reply comment period until March 11, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02716 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2452–230]

Consumers Energy Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Land Management Plan Amendment and Non-Project Use of Project Lands.

b. *Project No:* 2452–230.

c. *Date Filed:* February 7, 2019.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Hardy Hydroelectric Project.

f. *Location:* The project is located on the Muskegon River in Newaygo County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Brooke K. McTaggart, Consumers Energy Company, 330 Chestnut Street, Cadillac, MI, 49601, (231) 779–5511, *brooke.mctaggart@cmsenergy.com.*

i. *FERC Contact:* Tara Perry, (202) 502–6546, *tara.perry@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 14, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2452–230. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the

official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Consumers Energy Company (licensee) requests Commission approval to amend its land management plan for the Hardy Project to allow for a multi-use, non-motorized trail on project lands. The licensee, in consultation with a trail committee of resource agencies and other entities, developed the plan for the proposed trail. The proposed approximate 42 mile-long trail with 20 bridges would be for hiking and mountain biking and would encircle a portion of the Hardy impoundment and primarily be located on licensee-owned property within the project boundary. The licensee proposes to convey certain interests in project lands to allow the County of Newaygo to construct and maintain the proposed trail. The trail would consist of 11 segments, and construction would be completed by the end of 2021.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02719 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3442–028]

City of Nashua New Hampshire; Notice of Comment Period Extension

On November 13, 2018, the City of Nashua held a joint meeting with the pertinent agencies for the Mine Falls Hydroelectric Project No. 3442 (the project); setting January 14, 2019, as the end of the formal period to file comments and study requests on the application for relicensing for the project. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 6, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02709 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 190–105]

Moon Lake Electric Association, Inc.; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor, new license.

b. *Project No.:* P–190–105.

c. *Date filed:* January 31, 2017.

d. *Applicant:* Moon Lake Electric Association, Inc.

e. *Name of Project:* Uintah Hydroelectric Project.

f. *Location:* The project is located near the Town of Neola, Duchesne County, Utah and diverts water from primarily the Uintah River as well as Big Springs Creek and Pole Creek. All project features, with the exception of a 0.4-acre portion of transmission line, are located entirely on the tribal lands of the Uintah and Ouray Native American Reservation and federal lands managed by Ashley National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Patrick Corun, Engineering Manager, Moon Lake Electric Association, Inc., 800 West U.S. Hwy. 40, Roosevelt, Utah 84066, (435) 722–5406, *pcorun@mleainc.com.*

i. *FERC Contact:* Quinn Emmering, (202) 502–6382, *quinn.emmering@ferc.gov.*

j. *Deadline for filing scoping comments:* March 14, 2019.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–190–105.

k. This application is not ready for environmental analysis at this time.

l. The Uintah Hydroelectric Project operates as a run-of-river facility

delivering water to the project facilities from three sources: The Uintah River, Big Springs Creek, and Pole Creek. The existing project facilities include: (1) The 8-foot-wide, 4-foot-deep, 1,100-foot-long earthen Big Springs canal that conveys flow from Big Springs Creek; (2) a stop-log diversion structure on the Big Springs canal that conveys flow to a 916-foot-long, 28-inch diameter, steel pipeline that connects to the point of diversion on the Uintah River; (3) an 80-foot-long, 4-foot-wide, 3-foot-high overflow-type concrete diversion structure with a 10-foot-high, 6.5-foot-wide steel slide gate on the Uintah River; (4) a concrete structure with manual slide gates for dewatering the main supply canal and returning water to the Uintah River immediately downstream of the Uintah diversion; (5) an emergency slide gate about midway along the main supply canal; (6) a 16-foot-wide, 8-foot-deep, 25,614-foot-long, clay-lined main supply canal which conveys water from Big Springs Creek and the Uintah River; (7) a stop-log diversion structure with non-functional control gates which diverts water from Pole Creek; (8) a 6-foot-wide, 4-foot-deep, 6,200-foot-long Pole Creek canal that collects water from the Pole Creek diversion; (9) an 86-inch-wide, 80-inch-long, 43-inch-high transition bay and a 140-foot-long, 14-inch diameter steel penstock collects water from the Pole Creek supply canal; (10) a 23-foot by 13-foot concrete forebay structure containing trashracks with 2.5-inch spacing, a headgate that is located at the termination of the main supply canal and the Pole Creek penstock, and an overflow channel; (11) a single 5,238-foot-long, 36-inch diameter polyurethane and steel penstock which delivers water to a concrete powerhouse with two Pelton turbines driving two 600-kilowatt generators; (12) a 600-foot-long tailrace; (13) a 4.75-mile-long, 24.9-kilovolt single wood pole distribution line; and (14) appurtenant facilities. The estimated average annual generation is about 6,073 megawatt-hours. The licensee proposes to modify the project boundary to account for an update to the project transmission line that reduced its total length from 8.5 miles to 4.75 miles.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to address the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in Item H above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* The Commission staff intends to prepare an Environmental Assessment (EA) for the Uintah Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on February 11, 2019.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02710 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14655–001]

Cat Creek Energy, LLC; Notice of Comment Period Extension

On November 20, 2018, the Commission issued a notice setting January 22, 2019, as the end of the formal period to file comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications on the successive permit application for the Cat Creek Energy Generation Facility Pumped Storage Hydroelectric Project No. 14655. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period to March 20, 2019.

Dated: February 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02829 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2808–000]

KEI (Maine) Power Management (III) LLC; Notice of Authorization for Continued Project Operation

On January 30, 2017, KEI (Maine) Power Management (III) LLC, licensee for the Barker's Mill Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Barker's Mill Hydroelectric Project is located on the Little Androscoggin River, in the City of Auburn, Androscoggin County, Maine.

The license for Project No. 2808 was issued for a period ending January 31, 2019. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2808 is issued to the licensee for a period effective February 1, 2019 through January 31, 2020, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license

(or other disposition) does not take place on or before January 31, 2020, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, KEI (Maine) Power Management (III) LLC., is authorized to continue operation of the Barker's Mill Hydroelectric Project until such time as the Commission acts on its application for a subsequent license.

Dated: February 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02828 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2299–082 and Project No. 14581–002]

Turlock Irrigation District and Modesto Irrigation District; Notice of Availability of the Draft Environmental Impact Statement for the Don Pedro and La Grange Projects

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the applications for new license for the Don Pedro Project (FERC No. 2299) and for an original license for the La Grange Project (FERC No. 14581) and has prepared a draft environmental impact statement (EIS) for the projects. The Don Pedro Project is located on the Tuolumne River in Tuolumne County, California. It occupies 4,802 acres of federal land administered by the U.S. Department of Interior, Bureau of Land Management. The La Grange Project is located on the Tuolumne River immediately downstream of the Don Pedro Project in Stanislaus and Tuolumne Counties, California. It occupies 14 acres of federal land administered by BLM.

The draft EIS contains staff's evaluations of the applicant's proposals and the alternatives for relicensing the Don Pedro Project and licensing the La Grange Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the draft EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street NE, Washington, DC 20426. The draft EIS also may be viewed on the Commission's website at *http://www.ferc.gov* under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by April 12, 2019.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2299–082 or P–14581–002.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Commission staff will hold two public meetings for the purpose of receiving comments on the draft EIS. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization comments, while the evening meeting is primarily for receiving input from the public. All interested individuals and entities will be invited to attend one or both of the public meetings. A notice detailing the exact date, time, and location of the public meetings will be forthcoming.

[1] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

For further information, please contact Jim Hastreiter at (503) 552–2760 or at *james.hastreiter@ferc.gov.*

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02714 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2698–109]

Duke Energy Carolinas, LLC; Notice of Comment Period Extension

On January 7, 2019, the Commission issued a notice setting February 6, 2019, as the end of the formal period to file comments, motions to intervene, and protests for the revised shoreline management plan application filed by Duke Energy Carolinas, LLC for its East Fork Hydroelectric Project No. 2698, located on the East Fork of the Tuckasegee River in Jackson County, North Carolina. Due to the funding lapse at certain federal agencies between December 22, 2018, and January 25, 2019, the Commission is extending the comment period until March 1, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02703 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2386–000]

City of Holyoke Gas and Electric Department; Notice of Authorization for Continued Project Operation

On August 31, 2016, City of Holyoke Gas and Electric Department, licensee for the Holyoke No. 1 Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Holyoke No. 1 Hydroelectric Project is located between the first and second canals adjacent to the Connecticut River, in the City of Holyoke in Hampton County, Massachusetts.

The license for Project No. 2386 was issued for a period ending January 31, 2019. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a

license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2386 is issued to the licensee for a period effective February 1, 2019 through January 31, 2020, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 31, 2020, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, City of Holyoke Gas and Electric Department, Inc., is authorized to continue operation of the Holyoke No. 1 Hydroelectric Project until such time as the Commission acts on its application for a subsequent license.

Dated: February 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02826 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2512–078]

Hawks Nest Hydro, LLC; Notice of Comment Period Extension

On December 19, 2018, the Commission issued a notice setting January 21, 2019, as the end of the formal period to file comments, motions to intervene, and protests for a Recreation Flow Release Plan for the Hawks Nest Hydroelectric Project No. 2512. The project is located on the New River, just upstream of the confluence of the New and Gauley Rivers, near the Town of Ansted in Fayette County, West Virginia. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 13, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02705 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169–114]

Notice of Comment Period Extension; Brookfield Smoky Mountain Hydropower LLC, Brookfield Smoky Mountain Hydropower LP

On January 8, 2019, the Commission issued a notice setting February 7, 2019, as the end of the formal period to file comments, motions to intervene, and protests on the transfer of license application for the Tapoco Hydroelectric Project No. 2169. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until February 25, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02711 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2837–033]

Erie Boulevard Hydropower, L.P.; Notice of Comment Period Extension

On December 14, 2018, the Commission issued a notice setting February 28, 2019, as the end of the formal period to file comments, recommendations, terms and conditions, and prescriptions for the license application for the Granby Hydroelectric Project No. 2837. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until April 4, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02706 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–082]

Notice of Comment Period Extension: Duke Energy Progress, LLC

On December 11, 2018, the Commission issued a notice setting January 10, 2019, as the end of the formal period to file comments, motions to intervene, and protests on the license amendment for the Yadkin Pee-Dee Hydroelectric Project No. 2206. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 4, 2019.

Dated: February 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02831 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–185]

FirstLight Hydro Generating Company; FirstLight CT Housatonic LLC; Notice of Comment Period Extension

On January 3, 2019, the Commission issued a notice setting February 2, 2019, as the end of the formal period to file comments, motions to intervene, and protests on the transfer of license application for the Housatonic River Hydroelectric Project No. 2576. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until February 25, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02712 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13212–005]

Kenai Hydro, LLC; Notice of Comment Period Extension

On December 6, 2018, the Commission issued a letter extending the comment period for comments on the draft EIS for the proposed Grant Lake Hydroelectric Project (P–13212–005) to January 9, 2019. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending this comment period until March 1, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02704 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–7–000]

Commission Information Collection Activities (FERC–915); Comment Request; Extension

February 11, 2019.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the approved information collection, FERC–915 (Public Utility Market-Based Rate Authorization Holders—Records Retention Requirements)

DATES: Comments on the collection of information are due by April 22, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–7–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–915, Public Utility Market-Based Rate Authorization Holders—Records Retention Requirements.

OMB Control No. 1902–0250.

Type of Request: Three-year extension of the FERC–915 information collection requirements with no changes to the current record retention requirements.

Abstract: In accordance with the Federal Power Act, the Department of Energy Organization Act (DOE Act), and the Energy Policy Act of 2005 (EPAct 2005), the Commission regulates the transmission and wholesale sales of electricity in interstate commerce, monitors and investigates energy markets, uses civil penalties and other means against energy organizations and individuals who violate FERC rules in the energy markets, administers accounting and financial reporting regulations, and oversees conduct of regulated companies.

The Commission imposes the FERC–915 record retention requirements, in 18 CFR 35.41(d), on applicable sellers to retain, for a period of five years, all data and information upon which they bill the prices charged for ''electric energy or electric energy products it sold pursuant to Seller's market-based rate tariff, and the prices it reported for use in price indices.''

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (adopted in Order No. 670) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Type of Respondent: Public Utility Market-Based Rate Authorization Holders.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] (rounded) for the information collection as follows:

[1] 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. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[2] The estimated hourly cost (for wages plus benefits) provided in this section are based on the figures posted by the Bureau of Labor Statistics (BLS) for the Utilities section available (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information (for December 2017, issued March 20, 2018, at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

File Clerk (Occupation code: 43–4071), $33.39 an hour. We are rounding the hourly cost to $33.00.

FERC–915, PUBLIC UTILITY MARKET-BASED RATE AUTHORIZATION HOLDERS—RECORDS RETENTION REQUIREMENTS

FERC requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
FERC–915	2,510	1	2,510	1 hr.; $33.00	2,510 hrs.; $82,830	$33.00
Total			2,510		2,510 hrs.; $82,830	

In addition, there are records storage costs. For all respondents, we estimate a total of 65,000 cu. ft. of records in off-site storage. Based on an approximate storage cost of $0.24 per cubic foot, we estimate total storage cost to be $15,600.00 (or $6.22 annually per respondent. The total annual cost for all respondents (burden cost plus off-site storage) is $98,430.00 (or $82,830 + $15,600); the average total annual cost per respondent is $39.22 ($6.22 + $33.00).

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02713 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 190–000]

Moon Lake Electric Association, Inc.; Notice of Authorization for Continued Project Operation

On January 31, 2017, Moon Lake Electric Association, Inc. licensee for the Uintah Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Uintah Hydroelectric Project is located near the Town of Neola, Duchesne County, Utah and diverts water from the Uintah River as well as Big Springs Creek and Pole Creek.

The license for Project No. 190 was issued for a period ending January 31, 2019. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 190 is issued to the licensee for a period effective February 1, 2019 through January 31, 2020, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 31, 2020, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Moon Lake Electric Association, Inc. is authorized to continue operation of the Uintah Hydroelectric Project until such time as the Commission acts on its application for a subsequent license.

Dated: February 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02827 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662–034]

FirstLight Hydro Generating Company, FirstLight CT Hydro LLC; Notice of Comment Period Extension

On January 3, 2019, the Commission issued a notice setting February 2, 2019, as the end of the formal period to file comments, motions to intervene, and protests on the transfer of license application for the Scotland Hydroelectric Project No. 2662. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until February 25, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02715 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–67–000]

National Fuel Gas Supply Corporation; Notice of Filing

Take notice that on February 7, 2019, National Fuel Gas Supply Corporation filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on February 27, 2019.

Dated: February 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02717 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485–077]

FirstLight Hydro Generating Company; Northfield Mountain LLC; Notice of Comment Period Extension

February 11, 2019.

On January 8, 2019, the Commission issued a notice setting February 7, 2019, as the end of the formal period to file comments, motions to intervene, and protests on the application for transfer of license and substitution of relicense applicant for the Northfield Mountain Pumped Storage Project No. 2485. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until February 25, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02702 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1889–088]

FirstLight Hydro Generating Company, FirstLight MA Hydro LLC; Notice of Comment Period Extension

On January 8, 2019, the Commission issued a notice setting February 7, 2019, as the end of the formal period to file comments, motions to intervene, and protests on the application for transfer of license and substitution of relicense applicant for the Turners Falls Hydroelectric Project No. 1889. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until February 25, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02707 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–101–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Final General Conformity Determination for the Proposed Northeast Supply Enhancement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final general conformity determination (GCD) for the Northeast Supply Enhancement Project (Project) proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. The final GCD was prepared to satisfy the requirements of the Clean Air Act, and was included in the final Environmental Impact Statement (EIS) for the Project, which was issued on January 25, 2019. The final GCD and our responses to public comments on the draft GCD are included in appendices I and M of the final EIS, respectively. The final GCD assesses the potential air quality impacts associated with the construction and operation of the following relevant subset of Project facilities:

- 10.2 miles of 42-inch-diameter pipeline loop in Lancaster County, Pennsylvania (the Quarryville Loop);
- 3.4 miles of 26-inch-diameter pipeline loop in Middlesex County, New Jersey (the Madison Loop);
- 23.5 miles of 26-inch-diameter pipeline loop in Middlesex and Monmouth Counties, New Jersey, and Queens and Richmond Counties, New York (the Raritan Bay Loop, which consists of 0.2 mile of pipe in onshore Middlesex County, New Jersey; 6.0 miles of offshore pipe in New Jersey waters; and 17.3 miles of offshore pipe in New York waters);
- modification of existing Compressor Station 200 in Chester County, Pennsylvania;
- construction of new Compressor Station 206 in Somerset County, New Jersey; and
- ancillary facilities.

All of the emissions above the General Conformity applicability thresholds from construction of the Project are expected to occur in New York and New Jersey within the New Jersey-New York-Connecticut Interstate Air Quality Control Region. The FERC staff concludes that the Project would achieve conformity with the New York and New Jersey State Implementation Plans through direct mitigation and/or the purchase of Emission Reduction Credits and Creditable Emissions Reductions.

For additional information on the Project, the public can view the final GCD in the final EIS on our website at *https://www.ferc.gov/industries/gas/enviro/eis/2019/01-25-19-FEIS.asp.*

Dated: February 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02830 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2512–079]

Hawks Nest Hydro, LLC; Notice of Comment Period Extension

On December 12, 2018, the Commission issued a notice setting January 12, 2019, as the end of the formal period to file comments, motions to intervene, and protests for a Recreation Management Plan for the Hawks Nest Hydroelectric Project No. 2512. The project is located on the New River, just upstream of the confluence of the New and Gauley Rivers, near the Town of Ansted in Fayette County, West Virginia. Due to the funding lapse at certain federal agencies between

December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 4, 2019.

Dated: February 11, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02708 Filed 2–19–19; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16–185; DA 19–52]

Seventh Meeting of the World Radiocommunication Conference Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the sixth meeting of the World Radiocommunication Conference Advisory Committee (WAC) will be held on March 11, 2019, at the Federal Communications Commission (FCC). The Advisory Committee will consider any preliminary views or draft proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: March 11, 2019; 11:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Mullinix, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at (202) 418–0491.

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2019 World Radiocommunication Conference (WRC–19).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fourth meeting of the Advisory Committee. Additional information regarding the Advisory Committee is available on the Advisory Committee's website, *www.fcc.gov/wrc-19.* The meeting is open to the public. The meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.* Comments may be presented at the Advisory Committee meeting or in advance of the meeting by email to: *WRC-19@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The proposed agenda for the fourth meeting is as follows:

Agenda

Seventh Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission: 445 12th Street SW, Room TW–C305, Washington, DC 20554, March 11, 2019; 11:00 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. NTIA Draft Preliminary Views and Proposals
5. IWG Reports and Documents Relating to Preliminary Views and Draft Proposals
6. Other Business

Nese Guendelsberger,

Deputy Chief, International Bureau, Federal Communications Commission.

[FR Doc. 2019–02755 Filed 2–19–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 19–55]

Federal Advisory Committee Act; Disability Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of renewal of the Disability Advisory Committee's charter.

SUMMARY: The Federal Communications Commission (Commission) hereby announces that the charter of the Disability Advisory Committee (hereinafter Committee) has been renewed pursuant to the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: Will Schell, Designated Federal Officer, Federal Communications Commission, Consumer and Governmental Affairs Bureau, (202) 418–0767, or email: *Will.Schell@fcc.gov.*

SUPPLEMENTARY INFORMATION: The General Services Administration approved renewal of the charter of the Committee pursuant to provisions of the FACA, (5 U.S.C. App. 2). The charter became effective December 21, 2018 and provides the Committee with authorization to operate for two years from the effective date.

The mission of the DAC is to make recommendations to the Commission on the full range of disability access topics specified by the Commission and to facilitate the participation of consumers with disabilities in proceedings before the Commission. In addition, this Committee is intended to provide an effective means for stakeholders with interests in this area to exchange ideas, which will in turn enhance the Commission's ability to effectively address disability access issues. The purpose of this committee is to provide the Commission with input that will help to ensure that consumers with disabilities have equal and affordable access to communications products and services, and to facilitate consumer involvement and input by people with disabilities into all activities of the Commission.

Issues to be considered by the Committee may include, but are not limited to, Communications Access: Telecommunications Relay Services (TRS) (Section 225 of the Communications Act); Telecommunications Services and Equipment (Section 255 of the Communications Act); Advanced Communications Services and Equipment (Sections 716 and 718 of the Communications Act); Hearing Aid Compatibility (Section 710 of the Communications Act); Access to Telephone Emergency Services (9–1–1) (Section 106 of the Twenty-First Century Communications and Video Accessibility Act); National Deaf-Blind Equipment Distribution Program (Section 719 of the Communications Act); Video Programming: Video Description (Sections 303(u), (z), and 713 of the Communications Act); Closed Captioning (Sections 303(u), (z), and 713 of the Communications Act); Access to Televised Emergency Information (Sections 303(u), (z), and 713 of the Communications Act); Accessible User Interfaces on Video Programming Apparatus/Access to Program Guides and Menus Provided by Navigation

Devices (Sections 303(aa) and (bb) of the Communications Act).

The Committee is organized under, and operates in accordance with, the provisions of the FACA. The Committee will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Committee will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Committee will be conducted in an open, transparent, and accessible manner. The Committee shall terminate two years from the date that this renewal is effective (on or before December 21, 2020), or earlier upon the completion of its work as determined by the Chairman, unless its charter is renewed prior to the termination date.

During the Committee's third term, it is anticipated that the Committee will meet in Washington, DC for at least three (3) one-day meetings. The first meeting date and agenda topics will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date.

In addition, as needed, working groups or subcommittees (ad hoc or steering) will be established to facilitate the Committee's work between meetings of the full Committee. All meetings, including those of working groups and subcommittees, will be fully accessible to individuals with disabilities.

Federal Communications Commission.

Suzy Rosen Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2019–02780 Filed 2–19–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1151]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 22, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1151.

Title: Sections 1.1411, 1.1412, 1.1413, and 1.1415 Pole Attachment Access Requirements.

Form Number: N/A.

Type of Review: Revision of a currently-approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,142 respondents; 145,538 responses.

Estimated Time per Response: 0.5–6 hours.

Frequency of Response: On-occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 554,410 hours.

Total Annual Cost: $6,750,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission is requesting Office of Management and Budget (OMB) approval for revisions to, and a three-year extension of, this information collection. In *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17–84, WT Docket No. 17–70, Third Report and Order and Declaratory Ruling, FCC 18–111 (2018) (Order), the Commission

adopted rules that implement the pole attachment requirements in section 224 of the Communications Act of 1934, as amended. The Order substantially revised 47 CFR 1.1411, 1.1412, and 1.1413. It also added new 47 CFR 1.1415.

Section 1.1411. In the Order, the Commission adopted a new one-touch, make-ready (OTMR) process for when a telecommunications carrier or cable television system (new attacher) elects to do the work itself to prepare a utility pole for a simple wireline attachment in the communications space. As part of the OTMR process, the new attacher typically first conducts a survey of the affected poles, giving the utility and existing attachers a chance to be present for the survey. New attachers must elect the OTMR process in their pole attachment application and must demonstrate to the utility that the planned work qualifies for OTMR. The utility then must determine whether the pole attachment application is complete and whether the work qualifies for OTMR, and then must either grant or deny pole access and explain its decision in writing. The utility also can object to the new attacher's determination that the work qualifies for OTMR, and that objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relates to a determination that the make-ready is not simple. If the new attacher's OTMR application is approved, then it can proceed with OTMR work by giving advance notice to the utility and existing attachers and allowing them an opportunity to be present when OTMR work is being done. New attachers must provide immediate notice to affected utilities and existing attachers if outages or equipment damage is caused by their OTMR work. Finally, new attachers must provide notice to affected utilities and existing attachers after OTMR work is completed, allowing them to inspect the work and request remediation, if necessary.

The Commission also adopted changes to its existing pole attachment timeline, which still will be used for complex work, work above the communications space on a utility pole, and in situations where new attachers do not want to elect OTMR. The Commission largely kept the existing pole attachment timeline intact, except for the following changes: (1) Revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether an application is complete; (2) requiring utilities to provide at least three business days' advance notice of any surveys to attachers; (3) establishing a 30-day deadline for completion of all make-ready work in the communications space; (4) eliminating the 15-day utility make-ready period for communications space attachments; (5) streamlining the utility's notice requirements; (6) enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines; (7) providing notice requirements when new attachers elect self-help, such notices to be given when new attachers perform self-help surveys and make-ready work, when outages or equipment damage results from self-help work, and upon completion of self-help work to allow for inspection; (8) allowing utilities to meet the survey requirement by electing to use surveys previously prepared on the affected poles by new attachers, and (9) requiring utilities to provide detailed make-ready cost estimates and final invoices on a pole-by-pole basis if requested by new attachers. Both utilities and existing attachers can deviate from the existing pole attachment make-ready timeline for reasons of safety or service interruption by giving written notice to the affected parties that includes a detailed explanation of the need for the deviation and a new completion date. The deviation shall be for a period no longer than necessary to complete make-ready on the affected poles, and the deviating party shall resume make-ready without discrimination when it returns to routine operations.

Section 1.1412. The Commission required utilities to make available, and keep up-to-date, a reasonably sufficient list of contractors that they authorize to perform surveys and make-ready work that are complex or involve self-help work above the communications space of a utility pole. Attachers can request to add to the list any contractor that meets certain minimum qualifications, subject to the utility's ability to reasonably object. For simple work, a utility may, but is not required, to keep an up-to-date, reasonably sufficient list of contractors that they authorize to perform surveys and simple make-ready work. For any utility-supplied contractor list, the utility must ensure that the contractors meet certain minimum requirements. Attachers can request to add to the list any contractor that meets the minimum qualifications, subject to the utility's ability to reasonably object. If the utility does not provide a list of approved contractors for surveys or simple make-ready, or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the minimum requirements, subject to notice and the utility's ability to disqualify the chosen contractor for reasonable safety or reliability concerns.

Section 1.1413. The Commission established a presumption that in a complaint proceeding challenging a utility's rates, terms, or conditions of pole attachment, an incumbent local exchange carrier (LEC) is similarly situated to an attacher that is a telecommunications carrier or a cable television system providing telecommunications services for purposes of obtaining comparable pole attachment rates, terms, or conditions. To rebut the presumption, the utility must demonstrate by clear and convincing evidence that the incumbent LEC receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent LEC over other telecommunications carriers or cable television systems providing telecommunications service on the same poles. Such a presumption applies only to pole attachment agreements entered into, or renewed after, the effective date of the Order, The Commission addressed the paperwork burdens for changes to Section 1.1413 in a separate collection—OMB Control No. 3060–0392, 47 CFR part 1 Subpart J—Pole Attachment Complaint Procedures.

Section 1.1415. The Commission adopted a new rule codifying its policy that utilities may not require an attacher to obtain prior approval for overlashing on an attacher's existing wires or for third-party overlashing of an existing attachment when such overlashing is conducted with the permission of the existing attacher. In addition, the Commission adopted a rule that allows utilities to establish reasonable advance notice requirements for overlashing (up to 15 days' advance notice). If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, then it must provide specific documentation of the issue to the party seeking to overlash within the 15-day advance notice period, and the party seeking to

overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. An overlashing party must notify the affected utility within 15 days of completion of the overlash and provide the affected utility at least 90 days to inspect the overlash. If damage or code violations are discovered by the utility during the inspection, then it must notify the overlashing party, provide adequate documentation of the problem, and elect to either fix the problem itself at the overlashing party's expense or require remediation by the overlashing party.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02776 Filed 2–19–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0986]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 22, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481, and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 1,877 respondents; 11,977 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 51,080 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016);

Connect America Fund; ETC Annual Reports and Certifications, WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017). The Commission has received OMB approval for most of the information collections required by these orders. At a later date, the Commission plans to submit additional revisions for OMB review to address other reforms adopted in the orders (*e.g.,* 47 CFR 54.313(a)(6)).

More recently, in the *2018 Rate-of-Return Order,* the Commission adopted a rule requiring rate-of-return ETCs receiving high-cost universal service support to identify on their annual FCC Form 481 their cost consultants and cost consulting firm, or other third-party, if any, used to prepare financial and operations data disclosures used to calculate high-cost support for their submissions to the National Exchange Carrier Association, USAC, or the Commission. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18–29, at 19–20, para. 42 (Mar. 23, 2018) (*2018 Rate-of-Return Order*). *See also* 47 CFR 54.313(f)(4).

The Commission therefore proposes to revise this information collection, as well as Form 481 and its accompanying instructions, to reflect this new requirement. Any increased burdens for particular reporting requirements are associated with ETCs newly subject to those requirements as a condition of receiving high-cost support.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02777 Filed 2–19–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, February 21, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes for December 13, 2018

Correction and Approval of Minutes for February 7, 2019

Draft Advisory Opinion 2018–12: Defending Digital Campaigns, Inc.

Draft Advisory Opinion 2018–13: OsiaNetwork LLC

Audit Division Recommendation Memorandum on Hall for Congress (A17–07)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202)694–1040, at least 72 hours prior to the meeting date.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2019–02880 Filed 2–15–19; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 6, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Paul T. Tellefson Family Trust under the Last Will and Testament of Paul T. Tellefson dated March 6, 1996, and its trustee Bruce Tellefson, both of Fargo, North Dakota;* to join the Tellefson family shareholder control group acting in concert and thereby retain shares of Bankshares of Hawley, Inc., Hawley, Minnesota and thereby indirectly retain shares of Valley Premier Bank, Hawley, Minnesota.

Board of Governors of the Federal Reserve System, February 14, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02794 Filed 2–19–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *S.B.C.P. Bancorp, Inc., Cross Plains, Wisconsin;* to acquire voting shares of Union Bancorp of Evansville, Inc., and thereby indirectly acquire Union Bank & Trust Company, both of Evansville, Wisconsin.

Board of Governors of the Federal Reserve System, February 14, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02795 Filed 2–19–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0057; Docket No. 2019–0003; Sequence No. 5]

Information Collection; Evaluation of Export Offers

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning ''Information Collection 9000–0057, Evaluation of Export Offers.''

DATES: Submit comments on or before April 22, 2019.

ADDRESSES: Submit comments identified by Information Collection 9000–0057, Evaluation of Export Offers, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0057, Evaluation of Export Offers'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0057, Evaluation of Export Offers''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0057, Evaluation of Export Offers'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0057, Evaluation of Export Offers.

Instructions: Please submit comments only and cite Information Collection ''Information Collection 9000–0057, Evaluation of Export Offers'' 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 (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–501–4082 or via email at *Curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. FAR provision 52.247–51, ''Evaluation of Export Offers,'' is required for insertion in Government solicitations when supplies are to be exported through Contiguous United States (CONUS) ports and offers are solicited on a free onboard (f.o.b.) origin or f.o.b. destination basis. The provision has three alternates, to be used (1) when the CONUS ports of export are DoD water terminals, (2) when offers are solicited on an f.o.b. origin only basis, and (3) when offers are solicited on an f.o.b. destination only basis. The provision collects information regarding the offeror's preference for delivery ports. The information is used to evaluate offers [on the basis of shipment through the port resulting in the lowest cost to the Government.

B. Annual Reporting Burden

Respondents: 100.
Responses per Respondent: 4.
Annual Responses: 400.
Hours per Response: 0.25.
Total Burden Hours: 100.

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 General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control Number ''9000–0057, Evaluation of Export Offers'' in all correspondence.

Dated: February 13, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–02779 Filed 2–19–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0721]

Agency Information Collection Activities; Proposed Collection; Comment Request; Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and Issue Certifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) 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 information collection requirements for the accreditation of third-party certification bodies to conduct food safety audits and issue certifications.

DATES: Submit either electronic or written comments on the collection of information by April 22, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 22, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 22, 2019. Comments

received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2019–N–0721 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Accreditation of Third-Party Certification Bodies to Conduct Food Safety Audits and Issue Certifications.'' 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.

• 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.gpo.gov/fdsys/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.

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. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 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.

Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and To Issue Certifications—21 CFR Part 1; Subpart M

OMB Control Number 0910–0750—Extension

FDA provides for accreditation of third-party certification bodies (CBs) to conduct food safety audits of eligible foreign food facilities, and issue food and facility certifications, pursuant to the FDA Food Safety Modernization Act. In accordance with 21 CFR part 1.600, Subpart M, FDA uses certifications issued by accredited third-party auditors/CBs in deciding whether to admit certain imported food into the United States that FDA has determined poses a food safety risk and in deciding whether an importer is eligible to participate in a program for expedited review and entry of food imports. Except for limited circumstances in which we may directly accredit CBs to participate in the accredited third-party audits and certification program, we will recognize accreditation bodies (ABs) to accredit third-party auditors/CBs. Use of accredited third-party CBs and food and facility certifications has helped us prevent potentially harmful food from reaching U.S. consumers and thereby improve the safety of the U.S. food supply. This collection of

information increases efficiency by reducing the number of redundant audits to assess compliance with applicable food safety requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act) and FDA regulations.

We estimate that there are about 200,000 foreign food and feed exporters that offer their food and feed for import into the United States. These foreign food and feed exporters include approximately 130,000 food and feed production facilities and approximately 71,000 farms. A proportion of these foreign food and feed exporters may offer food subject to mandatory certification requirements under section 801(q) of the FD&C Act (21 U.S.C. 381(q)(3)). In that case, the eligible entities must either comply with this collection of information to obtain certification from a CB accredited under the third-party program to continue exporting their food products into the United States, or a foreign government designated by FDA, or lose their access to U.S. markets. We assume that in any given year, 75 foreign food and feed exporters will be subject to section 801(q) of the FD&C Act.

We estimate that 25 ABs will accredit CBs that will conduct food safety audits of foreign eligible entities that offer food or feed for import to the United States. We also estimate that approximately 207 CBs accredited by the 25 AB applicants will comply with the collection of information to participate in the program. In addition, we expect that one CB will apply and participate in the third-party program via direct accreditation by FDA under this collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part 1; subpart M	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Avg. burden per recordkeeping (in hours)	Total hours
§ 1.625	25	426	10,600	0.25 (15 minutes)	2,663
§ 1.624(c)	25	1	25	8	200
§ 1.657(d)	208	1	208	8	1,664
§ 1.652	208	48.5	10,088	0.083 (5 minutes)	837
§ 1.653(b)(2)	208	48.5	10,088	0.083 (5 minutes)	837
§ 1.656(c)	208	0.25	52	1	52
Total Annual Recordkeeping Burden					6,253

[1] There are no operations and maintenance costs associated with annual recordkeeping burden.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part 1; subpart M	Number of respondents	Number of responses per respondent	Total annual responses	Avg. burden per response (in hours)	Total hours
§ 1.634	25	1	25	8	200
§ 1.673	1	1	1	10	10
§ 1.623(a)	25	8.79	220	0.25 (15 minutes)	55
§ 1.623(b)	25	1	25	0.25 (15 minutes)	6
§ 1.653(b)(1)	208	48.5	10,088	0.25 (15 minutes)	2,522
§ 1.656(a) [2]	207	48.5	10,040	0.25 (15 minutes)	2,510
§ 1.656(a) [3]	207	48.5	10,040	0.25 (15 minutes)	2,510
§ 1.656(a) [4]	1	55.4	55	0.25 (15 minutes)	14
§ 1.656(b) [5]	207	1	207	0.25 (15 minutes)	52
§ 1.656(b) [6]	1	1	1	0.25 (15 minutes)	1
§ 1.656(c)	208	0.25	52	0.25 (15 minutes)	13
§ 1.656(e) [7]	208	0.25	52	0.25 (15 minutes)	13
§ 1.656(e) [8]	207	0.25	52	0.25 (15 minutes)	13
Total Annual Reporting Burden					7,919

[1] There are no operating or maintenance costs associated with annual reporting.
[2] Annual reporting of regulatory audit reports by CBs accredited by recognized ABs to their accrediting ABs.
[3] Annual reporting of regulatory audit reports by CBs accredited by recognized ABs to the FDA.
[4] Annual reporting of regulatory audit reports by directly accredited CBs to the FDA.
[5] Annual reporting of self-assessment by accredited CBs to their recognized ABs.
[6] Annual reporting of self-assessment by directly-accredited CBs to the FDA.
[7] Annual reporting of serious risk to public health by CBs accredited under the third-party program to eligible entities.
[8] Annual reporting of serious risk to public health by accredited CBs to their recognized ABs.

The total annual recordkeeping burden by 25 recognized ABs and 208 CBs accredited under the third-party program is estimated at 6,253 hours (see table 1). We assume that all ABs that apply for recognition in the program become recognized and all CBs that apply for accreditation are accredited. The total annual reporting burden by 25 recognized ABs and 208 CBs accredited under the program is estimated at 7,919 hours (see table 2).

We have adjusted our burden estimate since last OMB approval of the information collection to reflect the removal of burden associated with one-time recordkeeping activities resulting from the implementation of new provisions. This results in an overall decrease of 60,650 annual burden hours.

Dated: February 13, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02806 Filed 2–19–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0013]

Agency Information Collection Activities; Proposed Collection; Comment Request; Sanitary Transportation of Human and Animal Food

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 the information collection requirements associated with the sanitary transportation of human and animal food.

DATES: Submit either electronic or written comments on the collection of information by March 22, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 22, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 22, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2013–N–0013 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Sanitary Transportation of Human and Animal Food.'' 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.

• 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.gpo.gov/fdsys/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.

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. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 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.

Sanitary Transportation of Human and Animal Food—21 CFR 1.900

OMB Control Number 0910–0773—Extension

This information collection supports FDA regulations regarding the sanitary transportation of human and animal food. The regulations are intended to focus on preventing food safety problems throughout the food chain and were issued under the Sanitary Food Transportation Act of 2005 (2005 SFTA), and the FDA Food Safety Modernization Act, enacted in 2011. The 2005 SFTA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), in part, by creating section 416 (21 U.S.C. 350e), which directs us to issue regulations to require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use prescribed sanitary transportation practices to ensure that food is not transported under conditions that may render the food adulterated. Section 416 also directs that we prescribe appropriate human and animal food transportation practice requirements relating to: (1) Sanitation; (2) packaging, isolation, and other protective measures; (3) limitations on the use of vehicles; (4) information to be disclosed to carriers and to manufacturers; and (5) recordkeeping.

In addition, the 2005 SFTA created section 402(i) of the FD&C Act (21 U.S.C. 342(i)), which provides that food that is transported or offered for transport by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food under conditions that are not in compliance with the regulations issued under section 416 is adulterated and section 301(hh) of the FD&C Act (21 U.S.C. 331(hh)), which prohibits the failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the regulations issued under section 416.

The 2005 SFTA also amended section 703 of the FD&C Act (21 U.S.C. 373) by providing that a shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by FDA, permit the officer or employee, at reasonable times, to have access to and to copy all records that are required to be kept under the regulations issued under section 416.

Accordingly, we issued regulations in 21 CFR 1.900 that establish requirements for the sanitary transportation of human and animal food, as well as procedures for respondents who wish to request a waiver for any requirement.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1.912; Record retention	1,502,032	1	1,502,032	0.083 (5 minutes)	124,669

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate an annual recordkeeping burden of 124,669 hours, consistent with the estimate found in our 2016 Final Regulatory Impact Analysis and used to establish the information collection. This assumes 1,502,032 workers will spend an average of 5 minutes on activities related to the record retention requirements under 21 CFR 1.912. We expect these activities will likely include documenting procedures and training, as well as sanitary transportation operations and specification requirements.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1.914; Waiver petitions	2	1	2	24	48

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate one waiver petition from each of two firms will be submitted and respondents will spend 24 hours to prepare and submit the petition to FDA.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section; activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
1.908; Disclosure of sanitary specifications; operating temperature conditions	226	1	226	* 0.5833	132

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* ~35 mins.

Finally, we estimate an annual third-party disclosure burden of 132 hours, consistent with the currently approved burden estimate for this collection of information. We assume each of 226 firms will spend an average of 35 minutes, annually, disclosing written records as required under 21 CFR 1.908.

Cumulatively, we have reduced our burden estimate for the information collection. We made this adjustment to reflect the removal of one-time burden associated with implementation of the new regulatory requirements. Because these provisions have since become effective, the one-time estimates previously included have been removed.

Dated: February 13, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02751 Filed 2–19–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Training and Career Development Special Emphasis Panel.

Date: March 19, 2019.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Elizabeth Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–1917, *Webbere@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 13, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02774 Filed 2–19–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Silvio O. Conte Center (P50) Review.

Date: March 28, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Ruth L. Kirschstein NRSA Individual Postdoctoral Fellowship (F32) Review.

Date: April 3, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 13, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02773 Filed 2–19–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of The Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

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: Advisory Committee to the Director, National Institutes of Health.

Date: March 22, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–4272, *Woodgs@od.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 14, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02823 Filed 2–19–19; 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; Diabetic Foot Applications.

Date: March 18, 2019.

Time: 12:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@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: February 13, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02772 Filed 2–19–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; NEI Mentored Career Development Applications (K08 and K23).

Date: March 25–26, 2019.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, National Eye Institute National Institutes of Health, Division of Extramural Research, 6700 B Rockledge Dr., Ste 3400, Rockville, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 13, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02771 Filed 2–19–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Neuropharmacology.

Date: April 4, 2019.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Microbial Infection Therapies, Resistance Mechanisms, and Diagnostics.

Date: April 17, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02770 Filed 2–19–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Brokers' Licenses

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Revocation of customs brokers' licenses.

SUMMARY: This document provides notice of the revocation of customs brokers' licenses by operation of law.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Branch Chief, Broker Management, Office of Trade, (202) 325–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs brokers' licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report. A list of revoked customs brokers' licenses appears below with both the ports which issued the licenses and the brokers' names within each port of issuance whose licenses were revoked, set forth alphabetically.

Last/company name	First name	License	Port of issuance
Barber	Karen	28306	Atlanta.
Dennison	Jonathan	30796	Atlanta.
Foster	Tracy	17167	Atlanta.
Gao	Yan	23374	Atlanta.
Generke	Ruth	30703	Atlanta.
Hutton	Jonathan	16625	Atlanta.
Lanoie	John	30648	Atlanta.
Okolo	Jerome	29152	Atlanta.
Robie	Kathleen	20432	Atlanta.
Rodriguez	Rita	30472	Atlanta.
Schultz	Janet	16793	Atlanta.
Turner	Michael	16476	Atlanta.
Vaughn	Amy	21076	Atlanta.
Ward	Linda	23830	Atlanta.
Yan	Yutao	32233	Atlanta.
Zhang	Ying	24133	Atlanta.
Davis-Smith	Dawn	23248	Baltimore.
Dill	Katrina	29599	Baltimore.
Dimarco	Antoinette	13103	Baltimore.
Dugan	Andrea	13250	Baltimore.
Marshall	Kathleen	21574	Baltimore.
Polacke	Cybll	28931	Baltimore.
Premium Logistics North America LLC		30362	Baltimore.
Shubert	Linda	17372	Baltimore.
Taffe	Kathryn	12528	Baltimore.
Twomey	Robert	17023	Baltimore.
Barlow	Kathleen	11535	Boston.
Buckley	Christopher	15258	Boston.
Busch	John	23804	Boston.
Carignan	Dennis	11426	Boston.
Frye-Wright	Cheryl	09210	Boston.
Fugere	Gloria	05927	Boston.
Galins	Astra	14835	Boston.
Gallagher	Janet	12093	Boston.
Holmes	Douglas	12124	Boston.
Leadbetter Jr	Robert	22573	Boston.
McClenahan	Randall Dean	11655	Boston.
Murphy	Robert	16028	Boston.
Nacca	Richard	28728	Boston.
Neary	Anne	11050	Boston.
O'Brien	Donald	10476	Boston.
Pearson	Valerie	07464	Boston.
Perrone	Donald	06898	Boston.
Peschier	Robert	11038	Boston.
Reinisch	Helga	22163	Boston.
Siler	William	08035	Boston.
Somers	Richard	07937	Boston.
Waite II	Harvey	09235	Boston.
Wyatt	Patricia	05832	Boston.
Anastasi	Thompson	09041	Buffalo.
Arena	Robert	05050	Buffalo.
Bartenstein	Frank	15826	Buffalo.
Benish	Deborah	07931	Buffalo.
Brei	Kenly	30050	Buffalo.
Cala	Margaret	10502	Buffalo.
Davis	Elizabeth	20615	Buffalo.
Dobiesz	Ronald	09127	Buffalo.
Dotson	Sandra	10334	Buffalo.
Gajewski	Robert	09270	Buffalo.
Gambino Jr	Jerry	05521	Buffalo.
Giambra	Leonard	15436	Buffalo.
Greco	Frank	06088	Buffalo.
Imbriano	Peter	10681	Buffalo.
Kolb	Laure	12146	Buffalo.

Last/company name	First name	License	Port of issuance
Odrzywolski	Michael	23310	Buffalo.
Oviatt	Kris	22527	Buffalo.
Owen Jr	John	05192	Buffalo.
Quigley	Mark	06069	Buffalo.
Rogers	Daniel	28978	Buffalo.
Schlopsnies	Lorita	17192	Buffalo.
Shellman	Paula	16489	Buffalo.
Belrose	Daniel J	20772	Champlain.
Carey	William H	05270	Champlain.
Henry	David A	05334	Champlain.
Padilla	Karen E	15420	Champlain.
Saunders	Sheldon	15421	Champlain.
Gorrell	Kimberly C	20798	Charleston.
Judy	Andrea Nicole	27811	Charleston.
Towney	Shelton B	09530	Charleston.
Turner	Lorinda	10365	Charleston.
Faison	Michelle	30144	Charlotte.
Furr	Suzanne Linker	04811	Charlotte.
Holden	Stephanie	27403	Charlotte.
Knott	John	28691	Charlotte.
Pangel	Maxine	11480	Charlotte.
Setzer	Ronald	13556	Charlotte.
Smeltzer	Sylvia	15974	Charlotte.
Askew	Mary	15311	Chicago.
Barger	Vera	17352	Chicago.
Burger	Joseph	04995	Chicago.
Contarsy	Laurence	15437	Chicago.
Degroot	Laura	09471	Chicago.
Deneka	Edward	04988	Chicago.
Donovan	Amanda	28535	Chicago.
Drozd	Dennis	12220	Chicago.
Ertler	Julia	10506	Chicago.
Gurmai	Michael	13520	Chicago.
Hanna	Victoria	14004	Chicago.
Jefferson	Bruce	15947	Chicago.
Kamaris	Perry	11586	Chicago.
Larsen	Margaret	16439	Chicago.
Lewis	Marc	12221	Chicago.
Lindholm	Nancy	13525	Chicago.
Lopez	Jose	31656	Chicago.
Neher	Blake	24131	Chicago.
Pawelczyk	Jeanine	15877	Chicago.
Ramm	William	21831	Chicago.
Reichstein	Claire	29392	Chicago.
Robinson	Julie	10800	Chicago.
Slapinski	Robert	14537	Chicago.
Staggs	Rebecca	13852	Chicago.
Stevens	James	29973	Chicago.
Swiech	Ann	17170	Chicago.
Vitols	Gail	10676	Chicago.
Welton	James	14034	Chicago.
Wrzesinski	Robert	12420	Chicago.
Wynne	Richard	08029	Chicago.
Albright	Clyde	06764	Cleveland.
Blanton	Nancy	14891	Cleveland.
Bowles	Kymberlee	27568	Cleveland.
Camic	Beverly	10204	Cleveland.
Clement	Pierre	30713	Cleveland.
Colburn	Sandra	16035	Cleveland.
Cross	Paul	22889	Cleveland.
Diersing	Jenifer	21811	Cleveland.
Farris	Donald	10205	Cleveland.
Gabriel	Meredith W	15182	Cleveland.
Hamilton	Denise	22750	Cleveland.
Henry	Donald	23809	Cleveland.
Hohenstein	Cynthia	11311	Cleveland.
Houk	Timothy	15866	Cleveland.
Kallmayer	Susan	05626	Cleveland.
Kneale	James	13239	Cleveland.
Lhota	Kenneth	20903	Cleveland.
Moore	David	04481	Cleveland.
Pierce	John	09987	Cleveland.
Pyatte	Charles	11837	Cleveland.
Santel	Jacob	32005	Cleveland.

Last/company name	First name	License	Port of issuance
Shea	Katherine	21689	Cleveland.
Short	Patricia	15279	Cleveland.
Spurgeon	Wynelle	07002	Cleveland.
Taliano	Natalie	16379	Cleveland.
Taylor	Linda	14905	Cleveland.
Tolliver	Silas	28252	Cleveland.
Veneziano	Patricia	23590	Cleveland.
Watson	Michael	06752	Cleveland.
Armstrong	Kathie	20206	Dallas.
Auten	Douglas	20569	Dallas.
Butler	Dustin	29068	Dallas.
Canada	Stephen	12831	Dallas.
CK Logistics Inc		20986	Dallas.
Edelstein	Ronald	21159	Dallas.
Ferguson	Norma	16582	Dallas.
Kruse	Amanda	30044	Dallas.
Mosley	Rick	13757	Dallas.
Snow	Rochelle	09491	Dallas.
Thompson	Laura J	07213	Dallas.
Umanah	Koko	31463	Dallas.
Venable	Donald	20398	Dallas.
Venable Family Interest Inc		23582	Dallas.
Worldlink Express Inc		23138	Dallas.
Adair	Matthew	11820	Detroit.
Andrews	Mark	28236	Detroit.
Bashaw	Deborah	24134	Detroit.
Bradley-Niner	Katie	31996	Detroit.
Brooks	Kevin	23325	Detroit.
Busch	Joshua	30447	Detroit.
Butash	Robert	12436	Detroit.
Casper	Christine	30455	Detroit.
Coury	Richard	22809	Detroit.
Cusenza	Daniel	30833	Detroit.
Ernewein	Carol	16839	Detroit.
Fitzpatrick	Ann	10255	Detroit.
Forbes	Laura Springer	06287	Detroit.
Gessler	Gary	17540	Detroit.
Glenn	William	27669	Detroit.
Havey	Paul	23653	Detroit.
Irwin	Timothy	09518	Detroit.
Jacobs	Marcella	09781	Detroit.
Jones	Leslie	04846	Detroit.
Jordan	Denise	15426	Detroit.
Kidd	Jean	14352	Detroit.
Kilp	Ralph	05451	Detroit.
Kominars	Ellen	22485	Detroit.
Kreucher	Gary	17020	Detroit.
Larson	Harvey	04920	Detroit.
Leja	Brian	09517	Detroit.
Marshall	David	14939	Detroit.
Moroni-King	Shirley	14593	Detroit.
Morris	Susan	07765	Detroit.
Radke	Jamie	29732	Detroit.
Register	Vernetta	15931	Detroit.
Robinson	Paul	14978	Detroit.
Sangster	Janet	15711	Detroit.
Schiferl	John	15973	Detroit.
Schmidt	Debra	17522	Detroit.
See	Daniel	05535	Detroit.
Shanks	Jay	14061	Detroit.
Steinhilber	Richard	16397	Detroit.
Stevens	Graham	28716	Detroit.
Stevens	Janet	11034	Detroit.
Thompson	Christopher	29385	Detroit.
Thompson	Linda	13242	Detroit.
Tucker	Nancy	21525	Detroit.
Vermeulen	Ronald	09316	Detroit.
Wilson	Chet	14986	Detroit.
Davis	Nellie M	13653	El Paso.
Maynard	Sarah-Jane W	13579	El Paso.
Mendoza	Maria De Jesus	14366	El Paso.
Stagecoach Cartage & Distribution, Inc		21135	El Paso.
Vasquez	Mario A	15772	El Paso.
Agnew	Stephen	07835	Great Falls.

Last/company name	First name	License	Port of issuance
Brucker	Richard	16800	Great Falls.
Byars	Artamis	21614	Great Falls.
Fahrenholtz	Janice	12116	Great Falls.
Gellert	Ryan	20852	Great Falls.
Henkle	Charles	13824	Great Falls.
Iverson	Dale	15779	Great Falls.
Johansen	Maureen	14177	Great Falls.
Mason	Jennie	12048	Great Falls.
Peterson	Jeannette	14769	Great Falls.
Rode	Mark	11881	Great Falls.
Sullivan	Joyce	13470	Great Falls.
Williams	Julie	16164	Great Falls.
Zimmerman	Nikki	22359	Great Falls.
Braverman	Carmen	04272	Houston.
Bynum	Diane	06323	Houston.
Capriles	Mauricio	07200	Houston.
Cooke	Marcia	09462	Houston.
Dipilato	Vincent	05172	Houston.
Doyle	Allyson	10571	Houston.
El	Muqallibu	30386	Houston.
Foty	Julia	06242	Houston.
Gandee	William	06383	Houston.
Hammond	Timothy	15296	Houston.
Harding	William	14461	Houston.
ISS Brokerage Services Inc		30545	Houston.
K & K Express, Inc		16731	Houston.
Kidd	William	15532	Houston.
McDonald	Patrick	30975	Houston.
Moreno	Ana	31585	Houston.
Peden	Margaret	14997	Houston.
Shriver	Sue	09741	Houston.
Stanford	Pamela	14839	Houston.
Summers	Dennis	05224	Houston.
Wild	Margretta	06428	Houston.
Tello	Mario	13059	Laredo.
Araki	Leslie	10284	Los Angeles.
Auyang	Herman	06935	Los Angeles.
Baran	Catherine	17236	Los Angeles.
Beltran	Rosa	16337	Los Angeles.
Berckley	Nina Marie	12535	Los Angeles.
Bernard	John	13209	Los Angeles.
Billow	David	29302	Los Angeles.
Billows	Dennis	12250	Los Angeles.
Bohen	Timothy	29585	Los Angeles.
Bornstein	Susan	13778	Los Angeles.
Brady	John	07512	Los Angeles.
Carmeli	Adam	29678	Los Angeles.
Chou	Susan	14405	Los Angeles.
Crutsinger	Katherine	29220	Los Angeles.
Curtis	Robert	11093	Los Angeles.
Davis	Casey	29467	Los Angeles.
Diep	Nghia	24033	Los Angeles.
Duntley	James	05668	Los Angeles.
Duntley	Marian Elizabeth	10288	Los Angeles.
FWI Corporation		09628	Los Angeles.
Fernandez	Max	06693	Los Angeles.
Finnerty	Sharon L	09090	Los Angeles.
Fordyce	Janet Ruth	14795	Los Angeles.
Gardner	Brett	14382	Los Angeles.
Garetson	Robert	11637	Los Angeles.
Gonzalez	Wilfred	05137	Los Angeles.
Hendrickson	Carol	11644	Los Angeles.
Henriques	Stella	07826	Los Angeles.
Ho	Frankie	09433	Los Angeles.
James L. Kinney CHB, Inc		22943	Los Angeles.
Kim	Jae	23324	Los Angeles.
Kirtley	George	13169	Los Angeles.
Kolstad	Victoria	21509	Los Angeles.
Lamana	Judy	09344	Los Angeles.
Lambert	Robert	13104	Los Angeles.
Larose	Amanda	28122	Los Angeles.
Lawlor	Bonnie	10693	Los Angeles.
Le Frois	Holly	13531	Los Angeles.
Lee	Angela	27589	Los Angeles.

Last/company name	First name	License	Port of issuance
Loncar	Catherine	13586	Los Angeles.
MacNicol	Neil	07535	Los Angeles.
Marlowe & Company, Inc		09608	Los Angeles.
Martinez	Pauline	16466	Los Angeles.
Meetre	Janet	10919	Los Angeles.
Meinheit	William	12189	Los Angeles.
Miyamoto	Atsushi	10422	Los Angeles.
Moran	Terrence	09606	Los Angeles.
Nishida	Guy Timothy	05956	Los Angeles.
Ostrowski	Jerzy	16748	Los Angeles.
Rumohr	Ullrich	07127	Los Angeles.
Saito	Wayne	06290	Los Angeles.
Salvo	Enrico	03359	Los Angeles.
Saxer	Fred	05824	Los Angeles.
Scheer	Amy Jo	14367	Los Angeles.
Schnare	Laverne	09136	Los Angeles.
Shafran	Lisa	22908	Los Angeles.
Shannon	Connie	09494	Los Angeles.
Shoemaker	Carole	10282	Los Angeles.
Sistla	Kishan	20692	Los Angeles.
Smith	Louis	05940	Los Angeles.
Stites	Keith	14073	Los Angeles.
Suzuki	Akio	13157	Los Angeles.
Tozer	Karen	13156	Los Angeles.
Trans-Union Customs Service, Inc		13810	Los Angeles.
Tucker	Susan	23670	Los Angeles.
Urciuoli	Lisa	13720	Los Angeles.
Wada	Eleanor	27900	Los Angeles.
Wedemeyer	Wilfried Erich Johann	10625	Los Angeles.
Wolf	Vivian	07746	Los Angeles.
Yi	Jeffrey	31576	Los Angeles.
Barr	James	20421	Milwaukee.
Pollack	Donna	20423	Milwaukee.
Radloff	Michael	11809	Milwaukee.
Stehlik	Constance	15310	Milwaukee.
Bode	Rachel Marie	10510	Minneapolis.
Deering	Christine	31281	Minneapolis.
Deschene	Linda	22629	Minneapolis.
Holland	Harold L	09662	Minneapolis.
Klucas	Donna	08020	Minneapolis.
Lukoskie	Lawrence T	06812	Minneapolis.
Schultz	Kay L	12104	Minneapolis.
Seegert	Norman A	07287	Minneapolis.
Soderman	Kjordan	31696	Minneapolis.
Thomas	Allen L	10510	Minneapolis.
Beaty	Mark D	28826	Mobile.
Cutchens	Karen Kimbrell	21727	Mobile.
Madden	Marvin	06059	Mobile.
Myers	Kenneth H	14160	Mobile.
O'Neil	Francis E	21238	Mobile.
Thompson	Cathy	20046	Mobile.
Woolley	Willis Paul	05780	Mobile.
Baker	Kathryn	11674	New Orleans.
Champagne Jr	Alois P	04523	New Orleans.
Davidson	Roberta H	07418	New Orleans.
Dillion	Talmage L	06956	New Orleans.
Kelley III	James	23151	New Orleans.
Madere	Veronica	17249	New Orleans.
Norris	Michael Allen	28571	New Orleans.
Renauldo	Anthony	15771	New Orleans.
St. John	Dale Raymond	03345	New Orleans.
Trescott	Diane	27484	New Orleans.
Advance Shipping Co., Inc		03597	New York.
Aldrich	Steven	29868	New York.
All City Brokers and Forwarders, LLC		21925	New York.
Antoniello	Francis	10649	New York.
Bacigalupo	Arnold	10480	New York.
Batkin	Shannon	17575	New York.
Brogan	Susan H	05862	New York.
Brokerage & Management Solutions, Inc		23389	New York.
Buckwalter	Andrew	07887	New York.
Cannon	Nancy	05565	New York.
Carroll	James	12877	New York.
Chou	Ya	28322	New York.

Last/company name	First name	License	Port of issuance
Coaxum	Virginia	22549	New York.
Crozier Fine Arts, Inc		13491	New York.
Cunningham	Patricia	09675	New York.
Czubak	Taras	07853	New York.
Delsardo	Judy	06844	New York.
Drummond	Lorraine	22842	New York.
Export-Import Air Services, Inc		04952	New York.
Fay	Pierre	14626	New York.
Fitzgerald	Edward	05719	New York.
Geraghty	James	15495	New York.
Hasson	Raymond	05492	New York.
Higgins	Elizabeth	11380	New York.
Jaisli	John	06078	New York.
Johnston Jr	E. Brownell	13453	New York.
Kampel	Deborah	10748	New York.
Kathmeyer	Birgit	16409	New York.
Kerans & Daly, Inc		15539	New York.
Kopp	Mark	10613	New York.
Krayton	Chester	11933	New York.
Liotta	Christine	12295	New York.
Liu	Donald	27904	New York.
Lui	Raymond	30421	New York.
McManus	John	09322	New York.
Miksits	Gertrude	11161	New York.
Moss	Rosanne	06166	New York.
Nazario	Aurelio	13464	New York.
Ost	Mary Ann	10179	New York.
Penson	James	03918	New York.
Perlweig	David	09514	New York.
Persaud	Nardat	10049	New York.
Petersel	Roberta	07895	New York.
Piechota	Robert	23529	New York.
Popowytsch	Diane	09719	New York.
Rafferty	Joseph	13279	New York.
Renn	Claire	12511	New York.
Richardson	Louise	13069	New York.
S.H. Brogan Consulting, Inc		10107	New York.
Sampathkumar	Mythili	30598	New York.
Sarkisian	Fanok Mara	06561	New York.
Schlaen-Kopelman	Marcela	24019	New York.
Schulmann	Allen	27411	New York.
Serrano	Norby	29098	New York.
Shi	Amy	29361	New York.
Stone	Evelyn	17363	New York.
Sullivan	William	17285	New York.
Thruport International LLC		29319	New York.
Timm	Gregory	10851	New York.
Timm Jr	Charles	03101	New York.
TreOrra, Inc		29439	New York.
Tse	Kan Hong	27798	New York.
Turner	William	07510	New York.
Van Ek	Edwin	09829	New York.
Weinberger	Andrew	09869	New York.
Wellock	John	09076	New York.
Winterfeld	Arthur	07098	New York.
Wo	Albert	07742	New York.
Wong	Chelsia	10756	New York.
Woo	Samantha	17389	New York.
Yang	James	28133	New York.
Zagariello	Joseph	12669	New York.
Zekser	Samuel	03381	New York.
Zeng	Wangyong	31053	New York.
Zubrycki	Gregory	14523	New York.
Carrillo	Doreen	32035	Nogales.
Chapman	Mary	23007	Nogales.
Kacy	Stephen	15638	Nogales.
Lay	Charles	06758	Nogales.
Partida	David	12543	Nogales.
Partida Brokerage, Inc		12590	Nogales.
Torpey	Diane	09116	Nogales.
O'Neal	Janet B	09909	Norfolk.
Price	Robin Meister	22774	Norfolk.
Riley	Elizabeth Jane	29404	Norfolk.
Brooks	Timothy	14825	Otay Mesa.

Last/company name	First name	License	Port of issuance
Bryant	Joyce	14982	Otay Mesa.
Cervantes	Elsa	16168	Otay Mesa.
Dorsch	Dorothy	06756	Otay Mesa.
Jones	Calvin	23484	Otay Mesa.
Lewis	Grace	22274	Otay Mesa.
Poe	Rachel	29388	Otay Mesa.
Ruelas	Edgar	22927	Otay Mesa.
Smith	Margaret A	07025	Otay Mesa.
Soto	Maria	12581	Otay Mesa.
Villanueva	Anthony	06010	Otay Mesa.
Vuckovich	Dragica	21931	Otay Mesa.
Weldy	Rose	13278	Otay Mesa.
Lehto	Benjamin	29648	Pembina.
Wilkie	Kathy	11490	Pembina.
Barnhill	Joan	04241	Philadelphia.
Burrows	Holly	28136	Philadelphia.
Cherry	Arthur	03504	Philadelphia.
D'Angelo	Frank	06446	Philadelphia.
Di Gabrielle	Marco	12062	Philadelphia.
Dunford	Margaret Ann	09830	Philadelphia.
Klingbeil	Susan	10847	Philadelphia.
McManus	Gerald	11185	Philadelphia.
Rivera	Miguel	20620	Philadelphia.
Simpson	Donald	06611	Philadelphia.
Sweeney	Marie	27978	Philadelphia.
Kelley	John T	11956	Portland, ME.
Lambert	Michelle	15031	Portland, ME.
Wilson	Janice E	05507	Portland, ME.
Backer	Lynda	15098	Portland, OR.
Bush	Katen	28700	Portland, OR.
Cassens	Brandon	30960	Portland, OR.
Cook	Jeffrey	15097	Portland, OR.
Forwarders	Lindsey	14223	Portland, OR.
Harker	Cynthia	10338	Portland, OR.
Hoem	Renee	10501	Portland, OR.
Parham	Thomas Edwin	05744	Portland, OR.
Perry	Sandra	17025	Portland, OR.
Pierson	Tiffany	30782	Portland, OR.
Potter	Teresa	13102	Portland, OR.
Russinger	Darren	23898	Portland, OR.
Stanton	Thomas	06635	Portland, OR.
Bateman	Terry	10259	San Francisco.
Beinhoff	Brigitte	05078	San Francisco.
Beleny	Ashley	31487	San Francisco.
Blake-Neumann	Annie	14620	San Francisco.
Chang	Amy M	17479	San Francisco.
Chen	April	23866	San Francisco.
Choe	Grace J	20682	San Francisco.
Cleary	Maritza	13679	San Francisco.
Cooley	Richard	05001	San Francisco.
Greenwood	Kim	09626	San Francisco.
Hanks	Ena	16652	San Francisco.
Harrison	Philip	12134	San Francisco.
Heng	Vic	05785	San Francisco.
Hernandez	Sofia	24150	San Francisco.
Hikima	Masaru	17119	San Francisco.
Holguin	Joe	05917	San Francisco.
Hover-Smoot	Philip	29816	San Francisco.
Insdorf	Jason	20210	San Francisco.
Kelley	Skyler	09796	San Francisco.
Kim	Brad	20411	San Francisco.
Kromat	Dan	04562	San Francisco.
Lal	Rajendra	15846	San Francisco.
Lingle	Jeanette Marie	16359	San Francisco.
Liu	David Nien-Tzu	23777	San Francisco.
Magee	Daniel	05644	San Francisco.
Marcillac	Ronald	07325	San Francisco.
Matthews	Celia	15273	San Francisco.
Murphee	Ludene C	22479	San Francisco.
Murphy	Gerhard	17558	San Francisco.
Nelson	Lisa	21960	San Francisco.
Obester	Douglas	27737	San Francisco.
Packard	Charles	06249	San Francisco.
Palomo	Gerardo	09756	San Francisco.

Last/company name	First name	License	Port of issuance
Partridge	Scott G	13151	San Francisco.
Peretti	Caroline	14965	San Francisco.
Perreira	Sylvia	14242	San Francisco.
Regan	Donald	23236	San Francisco.
Riley	Norene T	29021	San Francisco.
Robb	David	21521	San Francisco.
Russell	Chris	06578	San Francisco.
Sanford	Courtney	32168	San Francisco.
Springer	Adela	20679	San Francisco.
St. Thomas	Harold	03831	San Francisco.
Swamidass	Jayanth	30315	San Francisco.
Takahara	Junji	16367	San Francisco.
Teague	Yannie	06105	San Francisco.
Thompson	Roland	12412	San Francisco.
Thorpe	Geoffrey	14113	San Francisco.
Trojak	Cinnamon	21959	San Francisco.
Truhe	Carolee	13562	San Francisco.
Weldon	Dianne	05229	San Francisco.
Wolf	Ronald	16674	San Francisco.
Young	Serena	17508	San Francisco.
Bernabe	Liza E. Freire	28813	San Juan.
Dobson	Andrew Newton	20815	San Juan.
J. Noya U.S. Customs Broker, Inc		23162	San Juan.
Latimer	Michael Louis	28815	San Juan.
Nazario	Jaime	18015	San Juan.
Oliver	Liza M. Ramirez De Arellano	30177	San Juan.
Aspinwall	Ronald	12433	Savannah.
Carter	Richard	05491	Savannah.
Clayton	Arthur	14257	Savannah.
Craig	Beth	09657	Savannah.
Hammontree	Cathy	13382	Savannah.
Hardeman	Laura Green	13434	Savannah.
Kiley	Patrice A	05715	Savannah.
Mobley	Paul E.	12001	Savannah.
Revoir	Patricia	10952	Savannah.
Russell	Ray	14292	Savannah.
Schirrmacher	Sandra	10525	Savannah.
Smith	Brenda	07678	Savannah.
Towns	Richard	04417	Savannah.
Wrench	David	14401	Savannah.
Ascott	Ivan	29797	Seattle.
Bloomer	Patricia	22047	Seattle.
Coughlin	Christopher	12663	Seattle.
Criez	Ernest	09062	Seattle.
Demeroutis	Melanie	06468	Seattle.
Fidler	Christopher	15701	Seattle.
Greening	Jacquline	10839	Seattle.
Ingham	Donna	22601	Seattle.
Johnson	Catherine	13791	Seattle.
Johnson	Kirk	12482	Seattle.
Lang	Mary	20479	Seattle.
Lewis	William	22037	Seattle.
Lyon	Diane Lysander	32240	Seattle.
MacGillivray	Andrew	15456	Seattle.
Messmer	Jeff	14856	Seattle.
Morris	Karen	18010	Seattle.
Odegaard	Steven	05170	Seattle.
O'Dell	Jane	05648	Seattle.
Ostey	Donald	16781	Seattle.
Qvigstad	Kari	11279	Seattle.
Rhodes	Bruce	07899	Seattle.
Roehl	Carl	05101	Seattle.
Scherer	Sylvia	13965	Seattle.
Stecher	Charlene	09140	Seattle.
Tokin	Albert	04212	Seattle.
Clair	Judy C	06458	St. Albans.
London	Karen Ann S	14994	St. Albans.
Brady	Carol	21819	St. Louis.
Butler	Mary J	14399	St. Louis.
Crampton	Sherri	28420	St. Louis.
Davis	Tammy	30019	St. Louis.
Drost	Robert	12848	St. Louis.
Eschenbrenner	Daniel	07001	St. Louis.
Feuerborn	Rachael	30947	St. Louis.

Last/company name	First name	License	Port of issuance
Goris	Jan C	20327	St. Louis.
Keller	Donald A	03776	St. Louis.
Kennedy	Duane	23728	St. Louis.
Landsbaum	Daniel	04946	St. Louis.
Langham	Stan	04580	St. Louis.
Meadows	Matthew	11512	St. Louis.
Meadows	William Harry	04292	St. Louis.
Strobel	Alicia	16640	St. Louis.
Vogt	Cynthia A	15189	St. Louis.
Williams	Richard	20444	St. Louis.
Bastman	Anders	15744	Tampa.
Hall	Corie	13627	Tampa.
Huber	Donald	12053	Tampa.
Joye	Mark	06478	Tampa.
Karumsi	Dipan	17360	Tampa.
Lisowski	Louis	13901	Tampa.
Menendez	Robert	05544	Tampa.
Rodrigues	Raymond	20407	Tampa.
Santana	Freddie	24349	Tampa.
Suzanne Shiffer CB, Inc		27645	Tampa.
Villar	Barbara	07387	Tampa.
Wise	Jonathan	23277	Tampa.
Depace	Lawrence	11579	Washington, DC.
Essex	Ashley E	30753	Washington, DC.
Golemon	Meredith Lee	22352	Washington, DC.
Oskul	Mehrnoosh Rouhani	13676	Washington, DC.
Seligmann	Emanuel Mark	07328	Washington, DC.
Ware	Sarah Rebecca	13978	Washington, DC.

Dated: December 21, 2018.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2019–02837 Filed 2–19–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will increase from the previous quarter. For the calendar quarter beginning January 1, 2019, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2018–32, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2019, and ending on March 31, 2019. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are increased from the previous quarter. These interest rates are subject to change for the calendar quarter beginning April 1, 2019, and ending June 30, 2019.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	033119	6	6	5

Dated: February 12, 2019.

Samuel D. Grable,

Assistant Commissioner and Chief Financial Officer, Office of Finance.

[FR Doc. 2019–02834 Filed 2–19–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Broker's License

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Revocation of customs broker's license.

SUMMARY: This document provides notice of the revocation by operation of law of a customs broker's license.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Branch Chief, Broker Management, Office of Trade, (202) 325–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice of the revocation of a customs broker's license pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.45(a) of title 19 of the Code of Federal Regulations (19 CFR 111.45(a)). The following customs broker's license and all associated permits were revoked by operation of law for failure to employ at least one qualifying individual who holds a valid customs broker's license.

Company name	License	Port of issuance
Stars Design Group Inc	32197	St. Louis.

Dated: December 21, 2018.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2019–02842 Filed 2–19–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0080]

Agency Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than April 22, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0080 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651–0080.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Abstract: This collection of information is required to ensure compliance with 19 U.S.C. 1484b, which provides that an otherwise dutiable large yacht, *i.e.,* one that exceeds 79 feet in length, is used primarily for recreation or pleasure, and had been previously sold by a manufacturer or dealer to a retail customer, may be imported without the payment of duty if the importer of record certifies that the large yacht is imported for sale at a boat show in the United States and posts a bond. The statute, inter alia, provides for the deferral of payment of duty until the yacht is sold but specifies that the duty deferral period may not exceed 6 months. This collection of information is provided for by 19 CFR 4.94a, which requires the submission of information to CBP such as the name and address of the owner of the yacht, the dates of cruising in the waters of the United States, information about the yacht, and the ports of arrival and departure.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Dated: February 14, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–02781 Filed 2–19–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0082]

Agency Information Collection Activities: African Growth and Opportunity Act (AGOA) Textile Certificate of Origin

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than April 22, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0082 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: African Growth and Opportunity Act (AGOA) Textile Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Action: CBP proposes to extend the expiration date of this information collection without change to the estimated burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The African Growth and Opportunity Act (AGOA) was adopted by the United States with the enactment of the Trade and Development Act of 2000 (Pub. L.106–200). The objectives of AGOA are (1) to provide for extension of duty-free treatment under the Generalized System of Preferences (GSP) to import sensitive articles normally excluded from GSP duty treatment, and (2) to provide for the entry of specific textile and apparel articles free of duty and free of any quantitative limits from the countries of sub-Saharan Africa.

For preferential treatment under AGOA, the exporter is required to prepare a certificate of origin and provide it to the importer. The certificate of origin includes information such as contact information for the importer, exporter and producer; the basis for which preferential treatment is claimed; and a description of the imported merchandise. The importers are required to have the certificate in their possession at the time of the claim, and to provide it to CBP upon request. The collection of this information is provided for in 19 CFR 10.214, 10.215, and 10.216.

Instructions for complying with this regulation are posted on CBP.gov website at: *https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/icp065_3.pdf.*

Estimated Number of Respondents: 12.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 24.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 7.9992.

Dated: February 14, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–02760 Filed 2–19–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–17131]

Extension of Agency Information Collection Activity Under OMB Review: Aircraft Repair Station Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0060, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves recordkeeping requirements and petitions for reconsideration for certain aircraft repair stations.

DATES: Send your comments by March 22, 2019. A comment to OMB is most

effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 6, 2018, 80 FR 52777.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Aircraft Repair Station Security.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0060.

Forms(s): NA.

Affected Public: Aircraft Repair Stations.

Abstract: In accordance with TSA's authority and responsibility over aviation security, TSA conducts inspections of certain aircraft repair stations located within the United States, and outside of the United States to ensure compliance with the requirements of 49 CFR part 1554. This includes the collection of information relating to recordkeeping of employment history records, petitions for reconsideration, and compliance with the recordkeeping requirements of Security Directives.

Number of Respondents: 502.[1]

Estimated Annual Burden Hours: An estimated 901 hours annually.

Dated: February 13, 2019.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2019–02817 Filed 2–19–19; 8:45 am]

BILLING CODE 9110–05–P

[1] After further evaluation, the respondents' amount has been adjusted from the reported number in the 60-day notice of 4,887 to 502. As a result, the annual burden hours have also been adjusted from 1,176 to 901.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7015–N–01]

60-Day Notice of Proposed Information Collection: Public Housing Operating Subsidy—Appeals

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

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:* April 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW, Room 3178, Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Subsidy—Appeals.

OMB Approval Number: 2577–0246.

Type of Request: Extension of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: Under the operating fund rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the rule. There are four grounds of appeal in 24 CFR 990.245 under which PHAs may appeal the amount of their subsidy. They are: a streamlined appeal; an appeal for specific local conditions; an appeal for changing market conditions; and an appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of these permitted bases of appeal, PHAs submit a written appeal request to HUD.

Respondents (*i.e.*, affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 105.

Estimated Number of Responses: 105.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2049.

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.

Dated: February 6, 2019.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2019–02814 Filed 2–19–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7015–N–02]

60-Day Notice of Proposed Information Collection: Public Housing Operating Fund Program: Operating Budget and Related Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Fund Program: Operating Budget and Related Form.

OMB Approval Number: 2577–0026.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–52574.

Description of the need for the information and proposed use: The operating budget and related form are submitted by PHAs for the low-income housing program. The operating budget provides a summary of proposed budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The related form provides a record of PHA Board approval of how the amount shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to assure that sound management practices will be followed in the operation of the development. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

Respondents (*i.e.* affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 3,041.

Estimated Number of Responses: 3,041.

Frequency of Response: 1.

Average Hours per Response: .17.

Total Estimated Burdens: 517.

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.

Dated: February 6, 2019.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2019–02815 Filed 2–19–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS01000.L12200000.DP0000.18X]

Notice of Availability of the Draft Resource Management Plan Amendment and Preliminary Environmental Assessment for Evaluation of Potential Areas of Critical Environmental Concern Within the Tres Rios Field Office, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment and Preliminary Environmental Assessment (EA) evaluating potential Areas of Critical Environmental Concern (ACEC) for the Tres Rios Field Office and by this Notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendment and Preliminary EA by April 22, 2019. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Tres Rios Field Office ACEC RMP Amendment by any of the following methods:

- *Website: https://go.usa.gov/xnnTC.*
- *Email: blm_co_trfo_acec@blm.gov.*
- *Fax:* (970) 882–6481.
- *Mail:* Tres Rios Field Office, 29211 Highway 184, Dolores, CO 81323.

Copies of the Tres Rios Field Office ACEC RMP Amendment are available in the Tres Rios Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Keith Fox, Planning and Environmental Specialist; telephone (970) 882–6856; email *blm_co_trfo_acec@blm.gov.* Persons who use a telecommunication device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has prepared an RMP Amendment with an associated EA to evaluate areas nominated by the BLM and the public within the Tres Rios Field Office Planning Area and within the Silverton area of San Juan County, Colorado (now managed by the BLM Gunnison Field Office), for potential designation as ACECs. The Preliminary EA considers management alternatives for 17 potential ACECs and discloses the direct, indirect and cumulative impacts of management prescriptions included in each of the four alternatives. The following alternatives are considered in the EA:

- *Alternative A:* No Action—continuation of existing management direction for ACECs;
- *Alternative B:* No ACECs Designated—existing ACECs would not be carried forward and proposed areas would not be designated;
- *Alternative C:* Agency Preferred—reduce the size of existing Anasazi Culture and Gypsum Valley ACECs, designate Mesa Verde Escarpment ACEC
- *Alternative D:* Designate all Proposed ACECs

See the following for potential ACEC acreage by alternative and the associated Relevant and Important Values:

Potential ACEC	Alternative A (No Action) acreage	Alternative C (Preferred) acreage	Alternative D acreage	Relevant and important values
Ancestral Puebloan (formerly named Anasazi Culture)	1,002	792	792	Cultural and Rare plants.
Cement Creek			446	Rare plants.
Cinnamon Pass			562	Rare plants.
Coyote Wash			642	Rare plants.
Disappointment Valley			2,688	Rare plants.
Dolores River Canyon—North			6,019	Scenic, cultural, rare plants, wildlife and geology.
Dolores River Canyon—South			5,550	Wildlife and rare plants.
Gypsum Valley	13,135	6,170	6,170	Rare plants.
Lake Como			100	Rare plants.
McIntyre Canyon			2,968	Rare plants.
Mesa Verde Entrance			626	Rare plants.
Mesa Verde Escarpment (this area was nominated during the public scoping period, and, therefore was not included in the Notice of Intent for the RMP Amendment).		7,373	7,373	Cultural and rare plants.
Muleshoe Bench			665	Wildlife.
Silvey's Pocket			707	Rare plants.
Slick Rock			3,427	Wildlife and rare plants.
Snaggletooth			23,825	Wildlife, cultural and scenic.
Spring Creek Basin			25,286	Rare plants.

The following ACEC nominations were evaluated to determine if the relevance and importance criteria were met, but were not included in any alternative because they did not meet relevance or importance criteria:

- Grassy Hills; for rare terrestrial plant community.
- Navajo River; for scenic quality and fish and wildlife species.

The following management limitations are recommended for the proposed ACECs in the preferred alternative, alternative C:

- Ancestral Puebloan—land use right of ways, utility corridors and road construction will avoid cultural resource sites by 100 meters; leasable mineral development will be restricted to No Surface Occupancy.
- Gypsum Valley—no changes in management prescriptions from current management.
- Mesa Verde Escarpment—utility right of ways prohibited, restrictions on recreation right of ways, facilities, road

construction, and limiting travel to designated routes.

Through this Notice, the BLM is inviting the public to provide comments regarding the potential environmental impacts related to the management alternatives. All public comments will receive consideration prior to the BLM's decision regarding ACEC designation.

Please note that public comments and information submitted, including names, street addresses and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Jamie E. Connell,

BLM Colorado State Director.

[FR Doc. 2019–02813 Filed 2–19–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04073000, XXXR4081X3, RX.05940913.7000000]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held on Wednesday, March 6, 2019, from 9:30 a.m. to approximately 5:00 p.m., and Thursday, March 7, 2019, from 8:30 a.m. to approximately 3:00 p.m. Please visit Reclamation's website at *www.usbr.gov/uc/progact/amp/amwg.html* for meeting updates should the Federal Government partially shut down again before the March meeting.

ADDRESSES: The meeting will be held at the Hilton Garden Inn Phoenix-Tempe ASU Research Park, 7290 S. Price Road, Tempe, AZ 85283.

FOR FURTHER INFORMATION CONTACT: Kathleen Callister, Bureau of Reclamation, telephone (801) 524–3781; email at *kcallister@usbr.gov;* facsimile (801) 524–5499.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) Current basin hydrology and water year 2019 operations; (2) non-native fish issues; (3) joint tribal liaison report; and (4) science results from Grand Canyon Monitoring and Research Center staff. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public and seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive call-in information or a link to the live stream webcast should contact Kathleen Callister, Bureau of Reclamation, Upper Colorado Regional Office, by email at *kcallister@usbr.gov,* or by telephone at (801) 524–3781, to register no later than five (5) business days prior to the meeting. Individuals requiring special accommodations to access the public meeting should contact Ms. Callister at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Kathleen Callister, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138; email at *kcallister@usbr.gov;* or facsimile (801) 524–5499, at least five (5) business days prior to the meeting. Any written comments received will be provided to the AMWG members.

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.

Kathleen Callister,

Manager, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 2019–02819 Filed 2–19–19; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Curium US, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 22, 2019. Such persons may also file a written request for a hearing on the application on or before March 22, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette

Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 16, 2018, Curium US, LLC, located at 2703 Wagner Place, Maryland Heights, Missouri 63043 has applied to be registered as an importer of the below listed basic class of controlled substance listed in schedule II.

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to import small quantities of the listed controlled substance to be used in diagnostic testing.

Dated: January 29, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–02876 Filed 2–19–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 01–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, February 28, 2019: 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

11:15 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–02912 Filed 2–15–19; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 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. Currently, the Office of Labor-Management Standards (OLMS) of the Department of Labor (Department) is soliciting comments concerning the proposed extension of the collection of information requirements implementing Executive Order (E.O.) 13496: Notification of Employee Rights Under Federal Labor Laws. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 22, 2019.

ADDRESSES: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

Please use only one method of transmission for comments (mail or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* President Barack Obama signed Executive Order 13496 (E.O. 13496) on January 30, 2009, requiring certain Government contractors and subcontractors to post notices informing their employees of their rights as employees under Federal labor laws. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every Government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold.

OLMS administers the enforcement provisions of Executive Order 13496, while the compliance evaluation and investigatory provisions are handled by the Department's Office of Federal Contract Compliance Programs (OFCCP), pursuant to the Order's implementing regulatory provisions (29 CFR part 471). Complaints can be filed with both agencies.

II. *Review Focus:* The Department 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;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility and clarity of the information to be collected; 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 submissions of responses.

III. *Current Actions:* The Department seeks extension of the current approval to collect this information. An extension is necessary because if this information collection is not conducted, E.O. 13496 could not be enforced through the complaint procedure.

E.O. 13496 advances the Administration's goal of promoting economy and efficiency of Federal government procurement by ensuring that workers employed in the private sector as a result of Federal government contracts are informed of their rights to engage in union activity and collective bargaining. Knowledge of such basic statutory rights promotes stable labor-management relations, thus reducing costs to the Federal government.

The contractual provisions require contractors and subcontractors to post a notice, created by the Secretary of Labor, informing employees of their rights under the National Labor Relations Act. The notice also provides a statement of the policy of the United States to encourage collective bargaining, as well as a list of activities that are illegal under the Act. The notice concludes with a general description of the remedies to which employees may be entitled if these rights have been violated and contact information for further information about those rights and remedies, as well as enforcement procedures.

The clause also requires contractors to include the same clause in their nonexempt subcontracts and purchase orders, and describes generally the sanctions, penalties, and remedies that may be imposed if the contractor fails to satisfy its obligations under the Order and the clause.

The regulatory provisions implementing E.O. 13496 (29 CFR part 471) include the language of the required notices, and they explain posting and contractual requirements, the complaint process, the investigatory process, and sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order. Specifically, 29 CFR part 471.11(c) sets forth the procedures that the Department must use when accepting written complaints alleging that a contractor doing business with the Federal government has failed to post the notice required by the Executive Order.

Type of Review: Extension.

Agency: Office of Labor-Management Standards.

OMB Number: 1245–0004.

Affected Public: Employees of Federal Contractors and Subcontractors.

Total Respondents: 10.

Total Annual Responses: 10.

Estimated Total Burden Hours: 12.80.

Estimated Time per Response: 1.28 hours.

Frequency: On occasion of employee of a Federal contractor or subcontractor filing a complaint alleging a violation of proposed 29 CFR part 471.

Total Burden Cost (capital/startup): $5.90 ($0.59 per response × 10 respondents).

Total Burden Cost (operating/maintenance): $0.

Employee Complaints Cost: $351.70 ($35.17 per response × 10 respondents).

Total Annual Burden Cost: $357.60 ($5.90 + $351.70).

Total respondent and responses estimates are based upon the estimate of 10 in the previous E.O. 13496 extension of information collection, in 2016. See 81 FR 7376. Since 2016, the Department has received 0 complaints. The Department maintains the estimate of 10 complaints for purposes of this renewal request.

The Department has not adjusted its total employee complaint hour estimate of 1.28 hours, which it estimated in the E.O. 13496 final rule. 75 FR 28368.

Based on the average seasonally-adjusted hourly earnings on private non-farm payrolls for all workers of $27.48, we estimate that an employee will incur a cost of approximately $35.17 for the 1.28 hours involved ($27.48 × 1.28) in preparing a complaint. The total hourly cost for all employees is therefore $351.70. Additionally, employees will incur costs of $0.59 per complaint in capital/start-up costs ($0.55 for postage + $0.03 for an envelope + $0.01 for paper) for a total cost of $5.90. (Although employees will submit many if not all complaints via email, the Department assumes, conservatively, that it will receive all via mail.) The total cost for the estimated 10 complaints is therefore $357.60 ($351.70 + $5.90). There are no ongoing operation/maintenance costs associated with this information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 8, 2019.

Andrew R. Davis,

Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor.

[FR Doc. 2019–02647 Filed 2–19–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 22, 2019.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Email: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect a copy of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (voice), *barron.barbara@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or

other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2018–026–C.

Petitioner: Castle Valley Mining, LLC, P.O. Box 475, Huntington, Utah 84528.

Mine: Castle Valley Mine No. 3, MSHA I.D. No. 42–02263 and Castle Valley Mine No. 4, MSHA I.D. No. 42–02335, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternate method of compliance to allow the use of low voltage battery-powered nonpermissible electronic surveying equipment, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in return airways.

The petitioner states that:

(1) To comply with the requirements of 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Underground mining, by its nature and the size and complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner.

(3) The petitioner will use the following total station and similar low voltage battery-operated total stations if they have an ingress protection (IP) rating of 66 or greater in return airways subject to the conditions in the Proposed Decision and Order (PDO):

—Sokkia Electronic Total Station Model CX–103.

(4) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available.

(5) The operator will maintain a logbook for nonpermissible electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(6) All nonpermissible electronic surveying equipment to be used in the return airways will be examined by the person operating the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

The results of the examinations will be recorded in the logbook.

(7) The equipment will be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Examination entries in the logbook will be maintained for at least 1 year from the date of entry.

(8) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment log book and will include a description of the work performed.

(9) Nonpermissible electronic surveying equipment that will be used in return airways will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the PDO.

(10) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the equipment is being used, the equipment will be de-energized immediately and withdrawn out of the return airways. All the requirements of 30 CFR 75.323 will be complied with prior to entering the return airways.

(11) Prior to setting up and energizing nonpermissible electronic surveying equipment in return airways, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the nonpermissible electronic surveying equipment will not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area within 40 feet of a working face where a continuous mining machine is used to extract coal, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(12) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(13) Prior to energizing the nonpermissible electronic surveying equipment in return airways, methane tests will be made in accordance with 30 CFR 75.323.

(14) Prior to surveying, all areas to be surveyed will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(15) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in return airways, outby the last open crosscut. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(16) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in intake air out of the return airways. Replacement batteries will be carried only in the compartment provided for a spare battery in the

nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(17) When using nonpermissible electronic surveying equipment in return airways outby the last open crosscut, the surveyor will confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity that is required by the mine's ventilation plan.

(18) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(19) All members of the surveying crew will receive specific training on the terms and conditions of the PDO before using nonpermissible electronic surveying equipment in return airways. A record of the training will be kept with the other training records.

(20) Within 60 days after the PDO becomes final, the operator will submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(21) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the PDO becoming final. The operator will replace or retire from service any electronic surveying instrument that was acquired between January 1, 2005 and December 31, 2010 within 2 years of the PDO becoming final. Within 3 years of the date that the PDO becomes final, the operator will replace or retire from service any total station or other electronic surveying equipment identified in the PDO acquired more than 10 years prior to the date that the PDO became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment that will be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture.

(22) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the requirements in the PDO.

(23) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

(a) On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing or curtains, where coal is being mined.

(b) Production may continue while nonpermissible electronic surveying equipment is used, if the surveying equipment is used in a separate split of air from where production is occurring.

(c) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(d) If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(e) Any disruption in ventilation will be recorded in the logbook required by the PDO. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(f) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. The training will be completed before any nonpermissible electronic surveying equipment will be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

(g) The operator will provide annual retraining to all personnel involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the PDO in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that application of existing standard will result in a diminution of safety to the miners and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2018–027–C.

Petitioner: Spartan Mining Company, #10 Hale Street, 4th Floor, Charleston, West Virginia 25301.

Mine: Road Fork No. 52 Mine, MSHA I.D. No. 46–09522, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to allow the length of trailing cables to be increased for the feeder and continuous mining machines as the equipment is trammed in and out of the petitioner's mine and at other times throughout the mine when the equipment is operating in a non-producing function.

(1) The petitioner seeks to extend the length of the continuous mining machine cable up to 2,000 feet with ⅙ American Wire Gauge (AWG) or larger copper cable.

(2) When the cable length is extended beyond the requirements in 30 CFR 75.503, the petitioner will only operate the continuous mining machine in tram mode up and down the slope and throughout the mine in non-production activities, such as moving the continuous mining machine from one area of the mine to another.

(3) With the extended cable, only the tram motor on the continuous mining machine will be operated. No other motor on the machine will be energized while the extended cable is installed.

(4) The petitioner states that extending the continuous mining machine cable for tramming will allow the petitioner to tram the continuous mining machine longer distances and handle the cable less often. While

tramming the continuous mining machine up and down the slope, the extended cable will allow the petitioner to use the power supply at the top and bottom of the slope and eliminate the need for a move box. The petitioner states that, given the width of the slope, the elimination of the move box will reduce the likelihood of an accident.

(5) An electrical engineering study was conducted and has demonstrated that the continuous mining machine cable can be safely extended.

(6) The petitioner seeks to extend the length of the feeder cable up to 2,000 feet with No. 2 AWG or larger copper cable.

(7) When the cable length is extended beyond the requirements set forth in 30 CFR 75.503, the petitioner will only operate the feeder in tram mode up and down the slope and throughout the mine in non-production activities, such as moving the feeder from one location in the mine to another.

(8) The petitioner states that extending the feeder cable for tramming will allow the petitioner to tram the feeder longer distances and handle the cable less often. While tramming the feeder up and down the slope, the extended cable will allow the petitioner to use the power supply at the top and bottom of the slope and eliminate the need for a move box. The petitioner states that, given the width of the slope, elimination of the move box will reduce the likelihood of an accident.

(9) An electrical engineering study was conducted and has demonstrated that the feeder cable can be safely extended.

(10) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions will include initial and refresher training regarding compliance with the terms and conditions in the PDO.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners under the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2019–02744 Filed 2–19–19; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 22, 2019.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Email: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect a copy of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (voice), *barron.barbara@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2018–023–C.

Petitioner: Little Buck Coal Company, 21 Pine Lane, Pine Grove, Pennsylvania 17963.

Mine: Broad Mountain Slope, MSHA I.D. No. 36–10233, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d), (h) and (i) (Mine map).

Modification Request: The petitioner requests a modification of the existing standard to permit the substation of cross-sections in lieu of contour lines through the intake slope, at locations of rock tunnel connections between veins, at 1,000 feet intervals of advance from the intake slope, and to limit the required mapping of mine workings above and below to those present within 100 feet of the coal vein(s) being mined through rock tunnels, unless these veins are interconnected to other veins beyond the 100 feet limit.

The petitioner requests modification of 30 CFR 75.1200(d), (h) and (i) for the following reasons:

(1) Due to the steep pitch encountered in mining anthracite coal veins, contour lines provide no useful information and their presence would make portions of the map illegible.

(2) The use of cross-sections in lieu of contour lines has been practiced since the late 1800s and provides critical information about spacing between veins and proximity to other mine workings, which fluctuate considerably.

(3) The vast majority of current underground anthracite mining involves either second mining of remnant pillars from previous mining or the mining of coal veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings that may or may not be mapped.

(4) All mapping for mines above and below is researched by the petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine, and a hazard analysis is done when mapping

indicates the presence of known or potentially flooded workings.

(5) When no rock tunnel connections are found, mine workings that exist beyond 100 feet from the mine are recognized as presenting no hazard to the mine due to the pitch of the vein and rock separation between the workings.

(6) The petitioner states that the mine workings above and below are usually inactive and abandoned and, therefore, are not usually subject to changes during the life of the mine.

(7) When evidence indicates prior mining was conducted on a coal vein above or below and research exhausts the availability of mine mapping, the vein will be considered mined and flooded and appropriate precautions will be taken in accordance with 30 CFR 75.388, which addresses drilling boreholes in advance of mining.

(8) Where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes may be used to intercept the workings and the results analyzed prior to beginning mining in the affected area.

The petitioner proposed the following terms and conditions:

(a) A search by a registered engineer or surveyor of all available mapping, including cross-sections will be conducted to determine the spacing between coal veins and the proximity of the existing and projected workings of the mine to other workings of adjacent mines. A hazard analysis will be done when mapping indicates the presence of known or potentially flooded workings.

(b) The map will show cross section(s) through the slope, at locations of rock tunnels between coal veins, and along gangways at 1,000-foot intervals. The mapping provided will show the crop line of the vein being mined.

(c) Where adjacent workings are located within 1,000 feet of the projected limit(s) of the same vein being mined, those working will be mapped, the potential water and gas hazards will be evaluated, and a revised drilling program, if needed, will be established under 30 CFR 75.388.

(d) Where projections include mining-through into inaccessible areas of the same coal vein or adjacent vein(s) and the conditions cannot be determined, a plan detailing the operation will be submitted under 30 CFR 75.389 for approval by the District Manager.

(e) Prior to recovering pillars known to be below the water level elevation in adjacent workings, a revised recovery plan will be submitted under 30 CFR 75.220(a)(1) for approval by the District Manager.

(f) When veins within 100 feet above or below the coal vein being mined are interconnected by rock tunnels to other veins, all interconnected vein mapping will be provided to within 1,000 feet of the active workings.

(g) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions will include initial and refresher training regarding compliance with the PDO.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2018–024–C.

Petitioner: Little Buck Coal Company, 21 Pine Lane, Pine Grove, Pennsylvania 17963.

Mine: Broad Mountain Slope, MSHA I.D. No. 36–10233, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202–1(a) (Temporary notations, revisions, and supplements).

Modification Request: The petitioner requests a modification of the existing standard to permit the required interval of survey to be established on an annual basis from the initial survey in lieu of every 6 months as required.

The petitioner requests modification of 30 CFR 75.1202–1(a) for the following reasons:

(1) The low production and slow rate of advance in anthracite mining make surveying on a 6-month interval impractical. In most cases, annual development is frequently limited to less than 500 feet of gangway advancement with associated up-pitch development.

(2) The vast majority of small anthracite miners are using non-mechanized, hand-loading methods of mining.

(3) Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both survey gangways.

(4) The availability of engineering/surveyor resources are very limited in the anthracite coal fields with surveying on an annual basis difficult to achieve with three contractors currently available.

The petitioner proposes the following terms and conditions:

(a) The mine map will be revised and supplemented at intervals of not more than 12 months on the basis of a survey made or certified by a registered engineer or a registered surveyor.

(b) The mine map will also be revised and supplemented on the basis of a survey made or certified by a registered engineer or registered surveyor prior to final retreat mining or from the point of the deepest penetration of gangway advance or breast advance if not connected to a surveyed location.

(c) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions will include initial and refresher training regarding compliance with the PDO.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2018–025–C.

Petitioner: Little Buck Coal Company, 21 Pine Lane, Pine Grove, Pennsylvania 17963.

Mine: Broad Mountain Slope, MSHA I.D. No. 36–10233, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400(c) (Hoisting equipment; general).

Modification Request: The petitioner requests a modification of the existing standard to permit operating the gunboat used in the mine to transport persons without safety catches or other no less effective devices because, to date, no such safety catch or device is available for use in the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of the petitioner's mine.

The petitioner requests modification of 30 CFR 75.1400(c) for the following reasons:

(1) Anthracite mine slopes range in length from 180 to 1,000 feet and vary in pitch from 30 to 75 degrees.

(2) A functional safety catch has not been developed and, consequently, if a makeshift device is installed it could activate on knuckles or curves when no emergency existed, causing a tumbling effect on the conveyance which would increase rather than decrease the hazard to miners. Therefore, the petitioner proposes to operate the steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device, and use hoisting ropes having a safety factor in excess of three.

The petitioner proposes the following terms and conditions:

(a) A communication signal system, audible to the hoist operator, will be installed so that it can be activated from

the gunboat at any location along the slope.

(b) The design safety factor of the hoist rope will be maintained at all times as not less than three times the values specified in 30 CFR 75.1431.

(c) A detailed inspection procedure of the ropes and terminations used at the mine will be posted in the hoist house and complied with at all times.

(d) A secondary safety connection will be securely fastened around the gunboat and securely fastened to the hoisting rope at a point above the main connecting device. The secondary safety connection must meet the safety factor requirements described in Item (b) above. The secondary safety connection will be the same size as or greater than the primary hoist rope and properly terminated above the primary hoist rope attachment with at least two clips on each end or with equivalent strength chains.

(e) At least 2 feet of clearance must be maintained between the highest part of the secondary attachment and the head sheave when the gunboat is positioned in the full dump position.

(f) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions will include initial and refresher training regarding compliance with the PDO.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners than that of the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2019–02745 Filed 2–19–19; 8:45 am]

BILLING CODE 4520–43–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year (FY) 2017 Agency Inventories Under the Federal Activities Inventory Reform (FAIR) Act

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Notice of public availability of agency inventories of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, Public Law 105–270, requires covered agencies to develop an annual inventory of activities performed by their employees that are not inherently governmental functions. In addition, OMB Circular A–76, *Performance of Commercial Activities,* requires covered agencies to develop an annual inventory of activities performed by their employees that are inherently governmental functions. These inventories help the agencies gain a better understanding of how labor is being used to carry out their mission. After OMB review, the agencies are required to make their list of activities available to the public. In accordance with the FAIR Act, OMB is publishing this notice to announce the availability of the inventories for Fiscal Year (FY) 2017 from the agencies listed below. These inventories include both activities that are not inherently governmental and activities that are inherently governmental. If an agency has not yet posted its inventory on its website, the agency's point of contact should be able to provide assistance.

As provided in the FAIR Act, interested parties who disagree with the agency's initial judgment may challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days of this Notice and, if not satisfied with this review, may appeal to a higher level within the agency.

Russell T. Vought,

Acting Director.

Attachment: FAIR Act Release FY 2017

CHIEF FINANCIAL OFFICER (CFO) ACT AGENCIES

Item	Agency	Point of contact	Email	Telephone	Website
1	Department of Commerce	Virna Winters	vwinters@doc.gov	202–482–3483	www.commerce.gov.
		Ron Ortega	rortega@doc.gov	202–482–3490	
2	Department of Defense	Thomas Hessel	Thomas.j.hessel.civ@mail.mil.	703–697–3402	https://prhome.defense.gov/M-RA/Inside-M-RA/TFM/Reports/.
3	Department of Education	Camille Manuel	camille.manuel@ed.gov	202–245–6658	http://www.ed.gov.
4	Department of Energy	Jeff Davis	jeff.davis@hq.doe.gov	202–287–1877	http://energy.gov.
5	Department of Health and Human Services.	William Kim	William.Kim@hhs.gov	202–205–1341	http://www.hhs.gov/.
6	Department of Homeland Security.	Katherine Chimera	katherine.chimera@hq.dhs.gov.	202–447–0177	www.dhs.gov.
		Pamela Campbell	pamela.campbell@hq.dhs.gov.	202–447–5255	
7	Department of Housing and Urban Development.	Maria Milligan	Maria.L.Milligan@HUD.gov	202–402–6417	https://www.hud.gov/.
8	Department of the Interior	Felisha Griffin	felisha_griffin@ios.doi.gov	202–513–7561	www.doi.gov.
9	Department of Justice	Neil Ryder	Neil.Ryder@usdoj.gov	202–616–5499	http://www.justice.gov/.
10	Department of Labor	Tanisha Bynum-Frazier	bynum.frazier.t@dol.gov	202–693–4546	www.dol.gov.
		Keisha Brown	brown.keisha@dol.gov	202–693–7271	
11	Department of State	Kenneth Black	blackkh@state.gov	202–485–7211	http://www.state.gov.
		Michelle Langley	LangleyML@state.gov	202–485–7198	
12	Department of Transportation.	Catherine Jones	Catherine.jones@dot.gov	202–366–4272	www.dot.gov.
		Germaine Myles	germaine.myles@dot.gov	202–366–5935	
13	Department of the Treasury	Kim Steide	kimberly.steide@treasury.gov.	202–622–9490	http://www.treasury.gov/.
14	Department of Veterans Affairs.	Steven Carney	Steven.Carney@va.gov	202–461–5959	https://www.va.gov.
15	Environmental Protection Agency.	Jennifer Cranford	Cranford.Jennifer@epa.gov	202–564–0798	www.epa.gov.

CHIEF FINANCIAL OFFICER (CFO) ACT AGENCIES—Continued

Item	Agency	Point of contact	Email	Telephone	Website
		Melanie Gooden	*Gooden.melanie@epa.gov*	202–564–3043	
16	General Services Administration.	Gail Sprinkle	*gail.sprinkle@gsa.gov*	571–236–7865	*www.gsa.gov.*
		Rachel Sullivan	*Rachel.sullivan@gsa.gov*	202–617–7552	
17	National Aeronautics and Space Administration.	Dan Walt	*daniel.j.walt@nasa.gov*	202–358–1444	*http://www.nasa.gov/.*
18	National Science Foundation.	Kurtis Shank	*kshank@nsf.gov*	703–292–2261	*www.nsf.gov.*
19	Nuclear Regulatory Commission.	Beverly King	*beverly.king@nrc.gov*	301–415–0722	*www.nrc.gov.*
		Jill Daly	*jill.daly@nrc.gov*	301–415–8079	
20	Office of Personnel Management.	James Muetzel	*james.muetzel@opm.gov*	202–606–9499	*http://www.opm.gov/.*
		Cecilia Lorenzo	*Cecilia.lorenzo@opm.gov*	202–606–0725	
21	Small Business Administration.	Laura Wages	*laura.wages@sba.gov*	202–205–6156	*www.sba.gov.*
22	Social Security Administration.	Shentae Hilbert	*Shentae.hilbert@ssa.gov*	410–965–6507	*www.socialsecurity.gov.*
		Steven Knight Jr.	*Steven.knight.jr@ssa.gov*	443–379–2334	
23	United States Agency for International Development.	Nancy Sanders Durosseau	*ndurosseau@usaid.gov*	202–712–4236	*www.usaid.gov.*
24	United States Department of Agriculture.	Genevieve Lucas	*Genevieve.lucas@dm.usda.gov.*	202–690–0015	*http://www.usda.gov.*

NON-CFO ACT AGENCIES

Item	Agency	Point of contact	Email	Telephone	Website
1	Broadcasting Board of Governors.	Chris Luer	*cluer@bbg.gov*	202–203–4608	*www.bbg.gov.*
2	Commodity Futures Trading Commission.	Alice Macklin	*AMacklin@CFTC.gov*	202–418–5860	*www.cftc.gov.*
3	Consumer Financial Protection Bureau.	Roland Jacob	*Roland.Jacob@cfpb.gov*	202–435–9625	*www.consumerfinance.gov.*
4	Consumer Product Safety Commission.	James Baker	*jbaker@cpsc.gov*	301–504–7575	*http://www.cpsc.gov.*
		James Thompson	*jthompson@cpsc.gov*	301–504–7797	
5	Court Services and Offender Supervision Agency for the District of Columbia.	Paul Girardo	*Paul.Girardo@csosa.gov*	202–220–5718	*https://www.csosa.gov/.*
6	Defense Nuclear Facilities Safety Board.	Gwendolyn Archer-Pailen	*gwendolyna@dnfsb.gov*	202–694–7061	*http://www.dnfsb.gov.*
7	Equal Employment Opportunity Commission.	Christine Nalli	*Christine.nalli@eeoc.gov*	202–663–4316	*http://www.eeoc.gov.*
8	Farm Credit Administration	Veronica McCain	*McCainV@fca.gov*	703–883–4031	*www.fca.gov.*
9	Federal Communications Commission.	Tom Green	*Tom.Green@fcc.gov*	202–418–0116	*www.fcc.gov.*
10	Federal Election Commission.	Gilbert Ford	*gford@fec.gov*	202–694–1216	*www.fec.gov.*
11	Federal Energy Regulatory Commission.	Nicole Yates	*Nicole.Yates@ferc.gov*	202–502–6327	*www.ferc.gov.*
		Carrie Anderson	*Carrie.Anderson@ferc.gov*	202–502–6552	
12	Federal Housing Financing Agency.	Natalie Jolly	*Natalie.Jolly@fhfa.gov*	202–649–3781	*www.fhfa.gov.*
13	Federal Labor Relations Authority.	Mike Jeffries	*mjeffries@flra.gov*	202–218–7982	*http://www.flra.gov.*
14	Federal Maritime Commission.	Michelle Calhoun	*mcalhoun@fmc.gov*	202–523–5901	*www.fmc.gov.*
15	Federal Mediation & Conciliation Service.	Traci Coddington	*tcoddington@fmcs.gov*	202–606–5466	*www.fmcs.gov.*
16	Federal Retirement Thrift Investment Board.	Sandra Byers	*Sandra.Byers@tsp.gov*	202–864–8664	*http://www.frtib.gov.*
		Shannon Louie	*Shannon.louie@tsp.gov*	202–864–8536	
17	Federal Trade Commission	Joseph Oleska	*joleska@ftc.gov*	202–326–2716	*http://www.ftc.gov.*
		George Adam	*gadam@ftc.gov*	202–326–2448	
		Stephanie Smith	*ssmith4@ftc.gov*	202–326–3010	

NON-CFO ACT AGENCIES—Continued

Item	Agency	Point of contact	Email	Telephone	Website
18	Holocaust Memorial Museum.	Helen Shepherd	hshepherd@ushmm.org	202–488–0400 x396	http://www.ushmm.org.
19	International Trade Commission.	Debra Bridge	Debra.Bridge@usitc.gov	202–205–2004	www.usitc.gov.
20	Merit Systems Protection Board.	Nancie Kebioh-Gray	nancie.kebioh-gray@mspb.gov.	202–254–4513	www.mspb.gov.
21	National Archives and Records Administration.	Kimberly Richardson	kimberly.richardson@nara.gov.	301–837–2902	www.archives.gov.
22	National Endowment for the Arts.	Ned Read	readn@arts.gov	202–682–5782	https://www.arts.gov.
23	National Endowment for the Humanities.	Robert Straughter	rstraughter@neh.gov	202–606–8237	www.neh.gov.
24	National Labor Relations Board.	Marsha Porter	Marsha.Porter@nlrb.gov	202–273–3726	http://www.nlrb.gov.
		Sandra Lawson	Sandra.lawson@nlrb.gov	202–273–3908	
25	National Transportation Safety Board.	Lisa Kleiner	Lisa.Kleiner@ntsb.gov	202–314–6462	www.ntsb.gov.
26	Office of Management and Budget.	Nate Benjamin	nathaniel_h_benjamin@omb.eop.gov.	202–395–5159	www.whitehouse.gov.
27	Office of Special Counsel	Elena Kaybulkina	ekaybulkina@osc.gov	202–804–7064	http://www.osc.gov/.
		Karl Kammann	kkammann@osc.gov	202–804–7063	
28	Office of the United States Trade Representative.	Deborah Tidwell	Deborah_Tidwell@ustr.eop.gov.	202–395–9410	https://ustr.gov/.
29	Peace Corps	Enrique Colon	ecolon@peacecorps.gov	202–692–1238	www.peacecorps.gov.
		Suzanne Hensell	shensell@peacecorps.gov	202–692–1888	
30	Railroad Retirement Board	Keith Earley	Keith.Earley@rrb.gov	312–751–4990	www.rrb.gov.
31	Securities and Exchange Commission.	Melissa Csigi	csigim@sec.gov	202–551–7647	www.sec.gov.
32	Selective Service System	Vernetta Fields	Vernetta.fields@sss.gov	703–605–4040	www.sss.gov.
		Kevin Adams	Kevin.adams@sss.gov	703–605–4060	

[FR Doc. 2019–02720 Filed 2–19–19; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2019–014]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice; correction.

SUMMARY: NARA published a document in the **Federal Register** on February 12, 2019, notifying the public that we have submitted to OMB a request to renew the information collections 3095–0037 (forms relating to civilian service records) and 3095–0060 (volunteer service application), and soliciting comments on them. The document contained incorrect numbers of respondents and annual hours for 3095–0037.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–837–0319.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 2019 (84 FR 3502), on page 3502 near the top of the third column, correct the ''Estimated number of respondents'' to read 20,800, and correct the ''Estimated total annual burden hours'' to read 1,733.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2019–02812 Filed 2–19–19; 8:45 am]

BILLING CODE 7515–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Regular Board of Directors Meeting

TIME AND DATE: 12:00 p.m., Wednesday, December 19, 2018.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO
- Internal Audit Report

Agenda

I. Call to Order
II. Approval of Minutes
III. Executive Session: Report from CEO
IV. Action Item Client Management System (CMS)
V. Action Item LIFT 6.0
VI. Discussion Item Delegation of Authority
VII. Management Program Background and Updates
VIII. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

Rutledge Simmons,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2019–02980 Filed 2–15–19; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Call for Nominations

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the Nuclear Medicine Physician position and the Patients' Rights Advocate position on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nuclear

Medicine Physician nominees should currently be practicing nuclear medicine in a clinical setting. Patients' Rights Advocate nominees should have professional or personal experience with or knowledge about patient advocacy. Also, involvement or leadership with patient advocacy organizations is preferred.

DATES: Nominations are due on or before April 22, 2019.

NOMINATION PROCESS: Submit an electronic copy of resume or curriculum vitae, along with a cover letter, to Ms. Kellee Jamerson, *Kellee.Jamerson@nrc.gov.* The cover letter should describe the nominee's current involvement with patients' rights advocacy and express the nominee's interest in the position. Please ensure that the resume or curriculum vitae includes the following information, if applicable: education; certification; professional association membership and committee membership activities; and number of years, timeframe, and type of setting for patient advocacy.

FOR FURTHER INFORMATION CONTACT: Ms. Kellee Jamerson, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards; (301) 415–7408; *Kellee.Jamerson@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI Nuclear Medicine Physician provides advice to the NRC staff on ideas associated with the regulation of diagnostic and therapeutic applications of byproduct material. This advice includes providing input on the NRC's proposed rules and guidance documents; providing recommendations on the training and experience requirements for physicians specializing in diagnostic and therapeutic nuclear medicine; identifying medical events associated with these uses; evaluating non-routine medical uses of byproduct material; bringing key issues in the nuclear medicine community to the attention of the NRC staff; and other nuclear medicine issues as they relate to radiation safety and the NRC Medical-Use Policy Statement.

The ACMUI Patients' Rights Advocate provides advice to the NRC staff on patients' issues associated with the regulation of medical applications of byproduct material. This advice includes ensuring patients' rights are represented during the development and implementation of the NRC's medical-use regulations. This individual is appointed based on his or her professional and personal experience with and/or knowledge about patient advocacy, as well as involvement and/or leadership with patient advocacy organizations.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in letters or during the selection process. Nominees should have the demonstrated ability to establish effective work relationships with peers and implement successful approaches to problem solving and conflict resolution. ACMUI members currently serve a four-year term and may be considered for reappointment to an additional term. The current ACMUI membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) nuclear medicine physicist; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; (k) health care administrator; and (l) diagnostic radiologist. For additional information about membership on the ACMUI, visit the ACMUI Membership web page, *http://www.nrc.gov/about-nrc/regulatory/advisory/acmui/membership.html.*

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to ACMUI business. Members are expected to attend semi-annual meetings in Rockville, Maryland and to participate in teleconferences, as needed. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed for travel (including per diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed for travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 13th day of February, 2019.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–02721 Filed 2–19–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2019–0029]

SHINE Medical Isotope Production Facility; Consideration of Approval of Transfer of License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for indirect transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by SHINE Medical Technologies, Inc. (SHINE) on December 11, 2018. The application seeks NRC approval of the indirect transfer of Construction Permit No. CPMIF–001 for the SHINE Medical Isotope Production Facility, currently held by SHINE. The indirect transfer will result from the establishment of a holding company, Illuminated Holdings, Inc. (Illuminated). The NRC is also considering amending Construction Permit No. CPMIF–001 for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by March 22, 2019. A request for a hearing must be filed by March 12, 2019. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0029. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearingdocket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

• *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Steven Lynch, Office of Nuclear Reactor Regulation, telephone: 301–415–1524, email: *Steven.Lynch@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to *Regulations.gov* Docket ID NRC–2019–0029 or NRC Docket No. 50–608 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0029.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for indirect transfer of the license dated December 11, 2018, is available in ADAMS under Accession No. ML18347A215.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0029 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of control of Construction Permit No. CPMIF–001 for the SHINE Medical Isotope Production Facility, currently held by SHINE. The NRC is also considering amending the construction permit for administrative purposes to reflect the proposed transfer.

According to the application for approval filed by SHINE, the indirect transfer will result from the establishment of a parent holding company, Illuminated, a Delaware corporation, which would be owned by the current SHINE owners. The conforming administrative amendment would revise SHINE's construction permit to reflect SHINE's new name, SHINE Medical Technologies, LLC, resulting from its conversion from a corporation into a single-member limited liability company, owned and controlled by Illuminated.

No physical changes to the SHINE Medical Isotope Production Facility or operational changes are being proposed in the application.

The NRC's regulations in 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed establishment of a holding company will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility, which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of

the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements in 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located

on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described in this notice, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated December 11, 2018.

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Jeff Bartelme, Licensing Manager, at 608–210–1735, for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland, this 14th day of February 2019.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Project Manager, Research and Test Reactors Licensing Branch, Division of Licensing Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–02788 Filed 2–19–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

President's Commission on White House Fellowships Advisory Committee: Closed Meeting

AGENCY: President's Commission on White House Fellowships, Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The President's Commission on White House Fellowships (PCWHF) was established by an Executive Order in 1964. The PCWHF is an advisory committee composed of Special Government Employees appointed by the President.

The meeting is closed.

Name of Committee: President's Commission on White House Fellowships Mid-Year Meeting.

Date: March 13–15, 2019.

Time: 8:00 a.m.–5:30 p.m.

Place: Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW, Washington, DC 20502.

Agenda: The Commission holds a mid-year meeting to talk with current Fellows on how their placements are going and discuss preparation for future events.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Pinkerton, 712 Jackson Place NW, Washington, DC 20503, Phone: 202–395–4522.

President's Commission on White House Fellowships.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–02726 Filed 2–19–19; 8:45 am]

BILLING CODE 6325–44–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85124; File No. SR–NASDAQ–2019–006]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

February 13, 2019.

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 February 1, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise The Nasdaq Options Market LLC's Rules (''NOM'') at Options 7, Section 5 to amend the Nasdaq Options Regulatory Fee or ''ORF.''

The text of the proposed rule change is available on the Exchange's website at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

http://nasdaq.cchwallstreet.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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Nasdaq assesses an ORF of $0.0008 per contract side. The Exchange proposes to increase this ORF to $0.0020 per contract side as of February 1, 2019. In light of recent market volumes, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange. The proposal would allow the Exchange to increase the per contract amount of ORF in order to offset the Exchange anticipated regulatory costs. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated regulatory costs. The Exchange also proposes to delete obsolete language in the rule text as described herein.

Collection of ORF

Currently, NOM assesses its ORF for each customer option transaction that is either: (1) Executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation (''OCC'') in the customer range,[3] even if the transaction was executed by a non-member of NOM, regardless of the exchange on which the transaction occurs.[4] If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [5]); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a NOM Participant, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by NOM from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than NOM, it was cleared by a NOM Participant in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between NOM and the transaction. If Broker A was not a NOM Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on NOM nor was it cleared by a NOM Participant.

In the case where a Participant both executes a transaction and clears the transaction, the ORF is assessed to and collected from that Participant. In the case where a Participant executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. In the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction. In the case where a Participant executes a transaction on NOM and a non-member clears the transaction, the ORF is assessed to the Participant that executed the transaction on NOM and collected from the non-member who cleared the transaction. In the case where a Participant executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Proposal

The Exchange proposes to increase the ORF from $0.0008 to $0.0020 per contract side as of February 1, 2019. In light of recent market volumes, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange. The proposal would allow the Exchange to increase the per contract amount of ORF in order to offset the Exchange anticipated regulatory costs. The Exchange proposes to add the following rule text to Options 7, Section 5, ''NOM Participants will be assessed an Options Regulatory Fee of $0.0020 per contract side as of February 1, 2019.''

The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified Participants via an Options Trader Alert of the proposed change to the ORF thirty (30) calendar days prior to the proposed operative date, February 1, 2019.[6] The

[3] Participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] The Exchange uses reports from OCC when assessing and collecting the ORF.

[5] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[6] *See* Options Trader Alert #2018–46.

Exchange believes that the prior notification market participants will ensure market participants are prepared to configure their systems to account properly for the ORF.

Finally, the Exchange proposes to remove the following rule text from Options 7, Section 5, ''NOM Participants are assessed an Options Regulatory Fee of $0.0027 per contract side. NOM Participants will be assessed an Options Regulatory Fee of $0.0008 per contract side as of August 1, 2018''. This text is obsolete as it references prior ORF rates which were effective in the past.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [8] 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 its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0008 to $0.0020 per contract side as of February 1, 2019 is reasonable because with this increase, the Exchange would recoup additional regulatory revenue to offset anticipated regulatory costs. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs.

The Exchange believes that increasing the ORF from $0.0008 to $0.0020 per contract side as of February 1, 2019 is equitable and not unfairly discriminatory because assessing the ORF to each Participant for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by a NOM Participant is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. OCC collects the ORF on behalf of NOM from Exchange clearing members for all customer transactions they clear or from non-members for all customer transactions they clear that were executed on NOM. The Exchange believes the ORF ensures fairness by assessing fees to Participants based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Participant proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Participants' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2019–006 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 No. SR–NASDAQ–2019–006. 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,

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

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 No. SR–NASDAQ–2019–006, and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02742 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10604; 34–85118; IA–5111; IC–33373]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Notice of annual inflation adjustment of civil monetary penalties.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is publishing this notice pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''). This Act requires all agencies to annually adjust for inflation the civil monetary penalties that can be imposed under the statutes administered by the agency and publish the adjusted amounts in the **Federal Register**. This notice sets forth the annual inflation adjustment of the maximum amount of civil monetary penalties (''CMPs'') administered by the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934 (the ''Exchange Act''), the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. These amounts are effective beginning on January 15, 2019, and will apply to all penalties imposed after that date for violations of the aforementioned statutes that occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ng, Senior Special Counsel, Office of the General Counsel, at (202) 551–7957, or Hannah W. Riedel, Senior Counsel, Office of the General Counsel, at (202) 551–7918.

SUPPLEMENTARY INFORMATION:

I. Background

This notice is being published pursuant to the 2015 Act,[1] which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act'').[2] The Inflation Adjustment Act previously had been amended by the Debt Collection Improvement Act of 1996 (the ''DCIA'')[3] to require that each federal agency adopt regulations at least once every four years that adjust for inflation the CMPs that can be imposed under the statutes administered by the agency. Pursuant to this requirement, the Commission previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs that could be imposed under the statutes the Commission administers.[4]

The 2015 Act replaces the inflation adjustment formula prescribed in the DCIA with a new formula for calculating the inflation-adjusted amount of CMPs. The 2015 Act requires that agencies use this new formula to re-calculate the inflation-adjusted amounts of the penalties they administer on an annual basis and publish these new amounts in the **Federal Register** by January 15 of each year.[5] The Commission previously published the first annual adjustment required by the 2015 Act on January 6, 2017 (the ''2017 Adjustment'').[6] As part of the 2017 Adjustment, the Commission promulgated 17 CFR 201.1001(a) and Table I to Subsection 1001, which lists the penalty amounts for all violations that occurred on or before November 2, 2015. For violations occurring after November 2, 2015, Subsection 1001(b) provides that the applicable penalty amounts will be adjusted annually based on the formula set forth in the 2015 Act. Subsection 1001(b) further provides that these adjusted amounts will be published in the **Federal Register** and on the Commission's website. The Commission subsequently published the next annual adjustment on January 8, 2018 (the ''2018 Adjustment'').[7]

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.[8] This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: The Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act. In addition, the Sarbanes-Oxley Act provides the Public Company Accounting Oversight Board (the ''PCAOB'') authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).[9] The definition of a CMP in the Inflation Adjustment Act encompasses such civil monetary penalties.[10]

II. Adjusting the Commission's Penalty Amounts for Inflation

This notice sets forth the annual inflation adjustment required by the 2015 Act for all CMPs under the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act, and certain civil monetary penalties under the Sarbanes-Oxley Act.

Pursuant to the 2015 Act, the penalty amounts in the 2018 Adjustment are adjusted for inflation by increasing them

[1] Public Law 114–74 Sec. 701, 129 Stat. 599–601 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890–892 (1990), codified at 28 U.S.C. 2461 note.

[3] Public Law 104–134, Title III, § 31001(s)(1), 110 Stat. 1321–373 (1996), codified at 28 U.S.C. 2461 note.

[4] *See* Release Nos. 33–7361, 34–37912, IA–1596, IC–22310, dated November 1, 1996 (effective December 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201; Release Nos. 33–7946, 34–43897, IA–1921, IC–24846, dated January 31, 2001 (effective February 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201; Release Nos. 33–8530, 34–51136, IA–2348, IC–26748, dated February 9, 2005 (effective February 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201; Release Nos. 33–9009, 34–59449, IA–2845, IC–28635, dated February 25, 2009 (effective March 3, 2009), previously found at 17 CFR 201.1004 and Table IV to Subpart E of Part 201; and Release Nos. 33–9387, 34–68994, IA–3557, IC–30408, dated February 27, 2013 (effective March 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201. The penalty amounts contained in these releases have now been consolidated into Table I to 17 CFR 201.1001.

[5] 28 U.S.C. 2461 note Sec. 4.

[6] Release Nos. 33–10276; 34–79749; IA–4599; IC–32414 (effective Jan. 18, 2017).

[7] Release Nos. 33–10451; 34–82455; IA–4842; IC–32963 (effective Jan. 15, 2018).

[8] 28 U.S.C. 2461 note Sec. 3(2).

[9] 15 U.S.C. 7215(c)(4)(D).

[10] The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. *See* Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Exchange Act. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties ''enforced'' by the Commission for purposes of the Inflation Adjustment Act. *See Adjustments to Civil Monetary Penalty Amounts,* Release No. 33–8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

by the percentage change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for October 2017 and the October 2018 CPI–U.[11] OMB has provided its calculation of this multiplier (the ''CPI–U Multiplier'') to agencies.[12] The new penalty amounts are determined by multiplying the amounts in the 2018 Adjustment by the CPI–U Multiplier and then rounding to the nearest dollar.

For example, the CMP for certain insider trading violations by controlling persons under Exchange Act Section 21A(a)(3) [13] was readjusted for inflation as part of the 2018 Adjustment to $2,052,107. To determine the new CMP under this provision, the Commission multiplies this amount by the CPI–U Multiplier of 1.02522, and rounds to the nearest dollar. Thus, the new CMP for Exchange Act Section 21A(a)(3) is $2,103,861.

Below is the Commission's calculation of the new penalty amounts for the penalties it administers:

U.S. Code citation	Civil monetary penalty description	2018 adjustment penalty amounts	CPI–U multiplier	2019 adjusted penalty amounts
15 U.S.C. 77h–1(g) (Securities Act Sec. 8A(g)).	For natural person	$8,458	1.02522	$8,671
	For any other person	84,585	1.02522	86,718
	For natural person/fraud	84,585	1.02522	86,718
	For any other person/fraud	422,925	1.02522	433,591
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	169,171	1.02522	173,437
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	817,654	1.02522	838,275
15 U.S.C. 77t(d) (Securities Act Sec. 20(d))	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person/fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others.	923,831	1.02522	947,130
15 U.S.C. 78u(d)(3) (Exchange Act Sec. 21(d)(3)).	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person/fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	923,831	1.02522	947,130
15 U.S.C. 78u–1(a)(3) (Exchange Act Sec. 21A(a)(3)).	Insider Trading—controlling person	2,052,107	1.02522	2,103,861
15 U.S.C. 78u–2 (Exchange Act Sec. 21B)	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others.	923,831	1.02522	947,130
15 U.S.C. 78ff(b) (Exchange Act Sec. 32(b))	Exchange Act/failure to file information documents, reports.	545	1.02522	559
15 U.S.C. 78ff(c)(1)(B) (Exchange Act Sec. 32(c)(1)(B)).	Foreign Corrupt Practices—any issuer	20,521	1.02522	21,039
15 U.S.C. 78ff(c)(2)(B) (Exchange Act Sec. 32(c)(2)(B)).	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	20,521	1.02522	21,039
15 U.S.C. 80a–9(d) (Investment Company Act Sec. 9(d)).	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person/fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	923,831	1.02522	947,130
15 U.S.C. 80a–41(e) (Investment Company Act Sec. 42(e)).	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person/fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others.	923,831	1.02522	947,130

[11] 28 U.S.C. 2461 note Sec. 5.

[12] Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 17, 2018), available at *https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf.* This multiplier represents the percentage increase between the October 2017 CPI–U and the October 2018 CPI–U, plus 1.

[13] 15 U.S.C. 78u–1(a)(3).

U.S. Code citation	Civil monetary penalty description	2018 adjustment penalty amounts	CPI–U multiplier	2019 adjusted penalty amounts
15 U.S.C. 80b–3(i) (Investment Advisers Act Sec. 203(i)).	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person/fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	923,831	1.02522	947,130
15 U.S.C. 80b–9(e) (Investment Advisers Act Sec. 209(e)).	For natural person	9,239	1.02522	9,472
	For any other person	92,383	1.02522	94,713
	For natural person/fraud	92,383	1.02522	94,713
	For any other person/fraud	461,916	1.02522	473,566
	For natural person/fraud/substantial losses or risk of losses to others.	184,767	1.02522	189,427
	For any other person/fraud/substantial losses or risk of losses to others.	923,831	1.02522	947,130
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(i)).	For natural person	136,052	1.02522	139,483
	For any other person	2,721,050	1.02522	2,789,675
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii)).	For natural person	1,020,394	1.02522	1,046,128
	For any other person	20,407,871	1.02522	20,922,558

Pursuant to the 2015 Act and 17 CFR 201.1001, the adjusted penalty amounts in this notice (and all penalty adjustments performed pursuant to the 2015 Act) apply to penalties imposed after the date the adjustment is effective for violations that occurred after November 2, 2015, the 2015 Act's enactment date. These penalty amounts supersede the amounts in the 2018 Adjustment.[14] For violations that occurred on or before November 2, 2015, the penalty amounts in Table I to 17 CFR 201.1001 continue to apply.[15]

By the Commission.

Dated: February 13, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02699 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[14] The penalty amounts in this notice are being published in the **Federal Register** and will not be added to the Code of Federal Regulations in accordance with the 2015 Act and 17 CFR 201.1001(b). *See* 28 U.S.C. 2461 note Sec. 4(a)(2); 17 CFR 201.1001(b). In addition to being published in the **Federal Register**, the penalty amounts in this notice will be made available on the Commission's website at *https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm,* as detailed in 17 CFR 201.1001(b). This website also lists the penalty amounts for violations that occurred on or before November 2, 2015.

[15] 17 CFR 201.1001(a).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85117; File No. SR–NYSEArca–2018–83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Regarding Investments of the iShares Bloomberg Roll Select Commodity Strategy ETF

February 13, 2019.

On December 19, 2018, NYSE Arca, Inc. 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 regarding investments of the iShares Bloomberg Roll Select Commodity Strategy ETF, shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed rule change was published for comment in the **Federal Register** on December 31, 2018.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 14, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 31, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2018–83).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02739 Filed 2–19–19; 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. 84931(December 21, 2018), 83 FR 67741.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33374; 812–14974]

Pacer Funds Trust, Pacer Advisors, Inc. and Pacer Financial, Inc.

February 13, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure; and (g) the Funds to issue shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

Applicants: Pacer Advisors, Inc. (''Initial Adviser''), a Pennsylvania corporation registered as an investment adviser under the Investment Advisers Act of 1940, Pacer Funds Trust (''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Pacer Financial, Inc. (''Initial Distributor''), a Pennsylvania corporation registered as a broker under the Securities Exchange Act of 1934 (''Exchange Act'').

Filing Dates: The application was filed on November 9, 2018.

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 by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 2019, 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 writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants, c/o Michael D. Barolsky, Esq, U.S. Bancorp Fund Services, LLC, 615 E. Michigan Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel, at (202) 551–6883, or Aaron Gilbride, Branch Chief, at (202) 551–6906 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1.Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day,

[1] Applicants request that the order apply to the new series of the Trust described in the application, as well as to additional series of the Trust and any other open-end management investment companies or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and (a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

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[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85123; File No. SR–CboeBZX–2019–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BZX Fee Schedule as It Relates to Pricing for the Use of Certain Routing Strategies

February 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fee schedule applicable to the BZX equities trading platform (''BZX Equities'') as it relates to pricing for the use of certain routing strategies. The text of the proposed rule change is attached [sic] as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the BZX Equities fee schedule to change the pricing applicable to orders routed using the SLIM routing strategy in connection with planned changes to the System routing table.[3] SLIM is a routing strategy offered by the Exchange that is used to target certain low cost protected market centers by routing to those venues after accessing available liquidity on the BZX Book, and prior to routing to other trading centers included in the System routing table. The Exchange periodically changes the low cost venues targeted by the SLIM routing strategy to ensure that the venues prioritized for routing can be accessed at a low cost. Currently, four exchanges are included in the System routing table as low cost protected market centers: Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), Nasdaq BX, Inc. (''BX''), and New York Stock Exchange LLC (''NYSE''). Pursuant to Rule 11.13(b)(3), the Exchange has determined to modify System routing table such that NYSE would no longer be listed as a low cost protected market center where orders are first routed after seeking available liquidity on the BZX Book. In addition, the Exchange has decided to add NYSE American LLC (''NYSE American'') and NYSE National, Inc. (''NYSE National'') as low cost protected market centers. These changes to the System routing table are scheduled to be introduced on February 1, 2019.

Currently, orders routed using the SLIM routing strategy are charged a fee of $0.00260 per share, except when routed to BYX or NYSE.[4] Orders routed to BYX using the SLIM routing strategy are provided a rebate of $0.00150 per share,[5] and orders routed to NYSE using this routing strategy are charged a fee of $0.00280 per share.[6] The Exchange proposes a number of changes to these fees in connection with the changes to the routing table for SLIM.

First, in recognition of the fact that EDGA and BX can be accessed at a low cost today, the Exchange proposes to provide a rebate to orders routed to these exchanges using the SLIM routing strategy. As proposed, the rebate would be $0.00240 per share for orders routed to EDGA, and $0.00100 for orders routed to BX. The rebates are consistent with rebates currently offered for orders routed to EDGA and BX using the TRIM or TRIM2 routing strategies, which yield fee codes ''BJ'' and ''TV,'' respectively. To effect the proposed change, the Exchange would therefore add SLIM to the list of routing strategies that yield fee code BJ and TV when routed to EDGA or BX. In addition, the fee schedule currently provides that the rebates offered pursuant to fee codes BJ and TV are applicable to eligible orders in all securities. EDGA and BX, however, do not provide rebates to orders that remove liquidity in securities priced below $1.00.[7] As such, the Exchange proposes to amend the pricing for orders routed to these exchanges pursuant to fee codes BJ and TV, such that no charge or rebate would be provided in securities priced below $1.00.

Second, the Exchange proposes to add two new fee codes, MX and NX, that relate to orders routed to NYSE American and NYSE National, respectively, using the SLIM routing strategy. Orders routed using the SLIM routing strategy would be charged a fee of $0.00020 per share if executed on NYSE American. If executed on NYSE National, those orders would be provided a rebate of $0.00200 per share in securities priced at or above $1.00, and no charge or rebate would be applied for securities priced below $1.00. The proposed fees and rebates chosen for routing to these venues generally reflect the current transaction fees and rebates available for accessing liquidity on those markets.[8]

Third, since the Exchange would now charge a low fee or pay a rebate for routing to all low cost protected market centers using the SLIM routing strategy, the Exchange proposes to increase the default fee charged to orders routed using the SLIM routing strategy to $0.00290 per share. This routing fee, designated under fee code SX, would apply to all orders routed using the SLIM routing strategy, except when routed to BX, BYX, EDGA, NYSE American, or NYSE National. Since NYSE would no longer be included as a low cost protected market center, the Exchange proposes to eliminate special pricing for orders routed to NYSE using the SLIM routing strategy under fee code D. Such orders would now pay the default routing fee for orders routed using this routing strategy, as described above.

Finally, the Exchange proposes to charge no fee and provide no rebate in securities priced below $1.00 for liquidity providing orders routed to The Nasdaq Stock Market LLC (''Nasdaq'') using the ROOC routing strategy. Currently, these orders would be eligible for a $0.00150 rebate pursuant to fee code ''RN.''[9] The Exchange is proposing to provide free executions instead as Nasdaq charges a fee instead of providing a rebate for securities priced below $1.00.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[11] in general, and furthers the requirements of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed routing fee changes are appropriate as they reflect changes to the System routing table used to determine the order in which venues are accessed using the SLIM routing strategy. SLIM specifically targets certain equities exchanges that provide cheap executions or rebates to liquidity removing orders, and routes to those venues after trading with the BZX Book, and prior to accessing liquidity

[3] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 11.13(b)(3). The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *Id.*

[4] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''SX.''

[5] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''BY.''

[6] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''D.''

[7] Orders that remove liquidity on EDGA for Tapes A, B, and C are neither charged a fee nor provided a rebate in securities priced below $1.00. *See* Cboe EDGA U.S. Equities Exchange Fee Schedule, fee codes ''BB,'' ''N,'' ''W.'' Orders that remove liquidity on Nasdaq BX in such securities are charged a fee equal to 0.10% of the total transaction cost. *See* Nasdaq BX Rulebook, Equity 7, Section 118(b).

[8] NYSE American currently charges a fee for removing liquidity that is $0.00020 per share in securities priced at or above $1.00, and 0.25% of the total dollar value of the transaction in securities priced below $1.00. *See* NYSE American Equities Price List, I. Transaction Fees.

NYSE National currently provides a rebate of $0.00200 per share in securities priced at or above $1.00 for members that achieve their taking tier. *See* NYSE National Schedule of Fees and Rebates, I. Transaction Fees, B. Tiered Rates. Orders that remove liquidity in securities below $1.00 are executed without charge or rebate. *See* NYSE National, Schedule of Fees and Rebates, I. Transaction Fees, A. General Rates.

[9] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''RN.''

[10] Nasdaq's standard fee is equal to 0.3% of the total transaction cost for orders in securities priced at less than $1.00. *See* Nasdaq Rulebook, Equity 7, Section 118(b).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

that may be available on other venues on the System routing table. The Exchange believes that the proposed changes reflect the intent of members when they submit routable order flow to the Exchange using the SLIM routing strategy.

The Exchange believes that it is reasonable and equitable to begin rebating orders routed to EDGA and BX using the SLIM routing strategy. Although the Exchange does not offer special pricing when routing to those markets using the SLIM routing strategy today, the Exchange does offer such incentives when routing to those markets using certain other routing strategies, including TRIM or TRIM2. As is the case for orders routed to EDGA and BX using those routing strategies, the proposed rebates applicable to the SLIM routing strategy are designed to reflect incentives offered to liquidity taking orders on these two venues, which operating using taker/maker pricing models that offer rebates to remove liquidity.

The Exchange also believes that it is reasonable and equitable to provide free executions, rather than rebates, for orders routed to EDGA and BX using the TRIM, TRIM2, or SLIM routing strategies in securities priced below $1.00. Although EDGA and BX both generally provide rebates to orders that remove liquidity, as described above, those rebates are limited to securities priced at or above $1.00.[13] For orders that remove liquidity in securities priced below $1.00, EDGA charges no fee and provides no rebate, while BX instead charges a fee.[14] With the proposed changes to the routing fees, the Exchange would recoup some, but not all, of the cost associated with routing orders in lower priced securities to these markets on behalf of members that use the TRIM, TRIM2, or SLIM routing strategies.

Similarly, the Exchange believes that it is reasonable and equitable to provide special pricing for orders routed to NYSE American and NYSE National using the SLIM routing strategy. As mentioned previously, the Exchange is adding these two exchanges to its list of low cost protected market centers, and wishes to provide the benefit of the rebate or lower fee provided by those markets to BZX members using the SLIM routing strategy. The Exchange believes that these changes may increase interest in the Exchange's SLIM routing strategy, in particular, by passing on better pricing to BZX members that choose to enter such orders on the Exchange, thereby encouraging additional order flow to be entered to the BZX Book.

The rebates provided to orders routed to NYSE National using the SLIM routing strategy would be limited to order price at or above $1.00 in light of the fact that NYSE National does not provide rebates to liquidity removing orders in securities priced below $1.00. For securities priced below $1.00, the Exchange would charge no fee and provide no rebate, which is equivalent to pricing on NYSE National.[15] Without limiting the proposed rebate for NYSE National to securities priced at or above $1.00, the Exchange would pay a significant rebate that would not be recouped via a rebate provided by the execution venue. The Exchange believes that is reasonable and equitable to limit routing rebates to circumstances where the Exchange would actually earn a rebate from the away venue in order to properly recoup the costs of accessing liquidity on such markets.

Given the proposed changes to the fees charged or rebates provided when routing low cost protected market centers, the Exchange also believes that it is reasonable and equitable to increase the fee charged when routing to other equities markets. Specifically, the Exchange charges a default routing fee for orders routed using the SLIM routing strategy that is, in effect, a blended fee designed to compensate the Exchange for routing to one of the venues not otherwise subject to special pricing. Since the Exchange is introducing special pricing for orders routed to low cost protected market centers, the venues subject to this pricing, would, on average, charge a higher execution fee for liquidity removing orders. Indeed, a number of the trading centers that are accessible using the SLIM routing strategy, including, for example, The Nasdaq Stock Market LLC (''Nasdaq'') and Cboe EDGX Exchange, Inc. (''EDGX''), charge a taker fee of $0.00300 per share.[16] The Exchange believes that the proposed increased routing fee for these orders reflects an appropriate blended rate for accessing liquidity on those markets, and would appropriately compensate the Exchange for the costs associated with routing to such venues. Furthermore, the Exchange believes that the changes to the System routing table would reduce the chance that an order is routed to a high cost venue since routing to low cost protected market centers is prioritized.

In addition, the Exchange believes that it is reasonable and equitable to provide free executions, rather than rebates, for liquidity providing orders routed to Nasdaq using the ROOC routing strategy in securities priced below $1.00. While Nasdaq typically provides a rebate to orders that add liquidity in securities priced at or above $1.00, it instead charges a fee for orders in securities priced below $1.00. Similar to other proposed changes described in this proposed rule change for securities priced below $1.00, this proposed change would ensure that rebates for routed orders are limited to securities that are rebate eligible on the execution venue.

Finally, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as the proposed fees and rebates would apply equally to all members that use the Exchange to route orders using the associated routing strategy. The proposed fees are designed to reflect the fees charged and rebates offered by certain away trading centers that are accessed by Exchange routing strategies, and are being made in conjunction with changes to the System routing table designed to provide members with low cost executions for their routable order flow. Furthermore, if members do not favor the proposed pricing, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed routing fee changes are designed to reflect changes being made to the System routing table used to determine where to send certain routable orders, and generally provide better pricing to members for orders routed to low cost protected market centers using the Exchange's routing strategies. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider

[13] *See* supra note 7.

[14] *Id.*

[15] *See* supra note 8.

[16] *See* Nasdaq, Equity Rules, Pricing Schedule; EDGX U.S. Equities Exchange Fee Schedule, Fee Codes and Associated Fees.

adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–006 and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02741 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85129; File No. SR–OCC–2018–015]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Changes to The Options Clearing Corporation's Management Structure

February 13, 2019.

On December 20, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2018–015 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder. The Proposed Rule Change was published for comment in the **Federal Register** on December 31, 2018,[3] and the Commission has received no comments in response. On February 1, 2019, OCC filed a partial amendment (''Partial Amendment No. 1'') to the Proposed Rule Change.[4] This order approves the Proposed Rule Change, as modified by Partial Amendment No. 1.

I. Description of the Proposed Rule Change [5]

OCC proposes to change its By-Laws, Rules, Board Charter, and certain Board-committee charters to (1) separate the roles of Executive Chairman and Chief Executive Officer (''CEO'') and reallocate authority and responsibilities between the two roles; (2) remove the requirement from OCC's By-Laws that the Board of Directors (''Board'') elect a Chief Administrative Officer (''CAO'') and delete the references to a CAO throughout OCC's By-Laws, Rules, and charters; and (3) provide additional flexibility regarding the Management Director seat on the Board, including providing that such a director is not required. According to OCC, the purpose of the Proposed Rule Change would be to re-establish the separation of the Executive Chairman and CEO roles and to implement additional organizational changes to OCC's governance structure, including providing additional flexibility to the Management Director on the Board and removing the requirement that the Board elect a CAO, that the Board has concluded would benefit OCC's operation and, consequently, OCC's ability to serve Clearing Members and the markets for which it clears and settles transactions.[6]

A. Separation of Roles of Executive Chairman and CEO

Currently, the Executive Chairman of OCC's Board also serves as OCC's CEO.[7] OCC stated that, at the time that it adopted this structure in 2017,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 84939 (Dec. 21, 2018), 83 FR 67762 (Dec. 31, 2018) (SR–OCC–2018–015) (''Notice'').

[4] In Partial Amendment No. 1, OCC corrected an error in Exhibit 5 without changing the substance of the Proposed Rule Change. Partial Amendment No. 1 is not subject to notice and comment because it does not materially alter the substance of the Proposed Rule Change or raise any novel regulatory issues. References to the Proposed Rule Change from this point forward refer to the Proposed Rule Change, as amended by Partial Amendment No. 1.

[5] All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules. OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[6] *See* Notice, 83 FR at 67763.

[7] *See* OCC By-Laws, Art. IV, Sec. 6(a).

combining the roles of Executive Chairman and CEO was part of a package of governance changes that OCC's Board concluded represented enhancements to OCC's leadership structure that would promote more efficient management and operations.[8] Since the adoption of the current structure, OCC has new members of its senior management team, including its current Chief Security Officer and Chief Information Officer.[9] As a result, OCC believes it is now well positioned to again separate the roles of Executive Chairman and CEO in its management structure.[10]

According to OCC, providing for separate Executive Chairman and CEO roles would add a counterbalance in the management and oversight of OCC.[11] Currently, OCC's Executive Chairman and CEO is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.[12] The Executive Chairman, as CEO, is also ''an officer responsible for all aspects of [OCC's] business and . . . its day to day affairs.'' [13] Under the Proposed Rule Change, the Executive Chairman would be less involved in day-to-day management decisions of the type more typically made by an executive but would retain his or her role vis-à-vis the Board.[14] In addition, the Executive Chairman would retain responsibility over internal audit, public affairs, and government relations. The CEO would be responsible for all aspects of OCC's business and of its day-to-day affairs, including enterprise risk management and compliance, and would be responsible for all aspects of the business of the Corporation that do not report directly to the Executive Chairman. The Chief Operations Officer (''COO'') would administer the day-to-day affairs and business of the Corporation in accordance with the directions of the CEO.

There are numerous provisions throughout OCC's By-Laws and Rules that the Proposed Rule Change would amend to change the list of officers authorized to act under the relevant provision. In some instances, the Executive Chairman will continue to be listed as an authorized individual; in other instances, the reference to the Executive Chairman would be replaced by the CEO. The Proposed Rule Change would replace references to the Executive Chairman with references to the CEO in those provisions that generally involve routine day-to-day business decisions or are, by their terms, temporary.[15] The Proposed Rule Change would add references to the CEO, but not remove references to the Executive Chairman, in those provisions that primarily involve emergency or other exigent circumstances, determinations around OCC's management structure, and other activities generally outside of OCC's day-to-day activities (*e.g.,* signing OCC share certificates).[16] OCC stated that the purpose of referencing both the Executive Chairman and CEO in such provisions would be to provide management the capacity to carry out OCC's affairs in such circumstances even if a particular officer is absent or is otherwise unable to perform his or her duties.[17] Because, as described below, OCC has proposed removing the role of CAO, the Proposed Rule Change would remove the CAO from the list of officers authorized to act under each relevant provision.

B. Removal of the Role of CAO

OCC's rules currently require the Board to elect a CAO.[18] This requirement was created in 2017 at the same time as the combining of the Executive Chairman and CEO roles and the removal of the role of the President.[19] At that time, OCC stated that the CAO role was created for the purpose of distributing the responsibilities of the President and to provide flexibility to help ensure that responsibility is not concentrated in any one officer.[20] OCC believes that, with the separation of the Executive Chairman and CEO roles, the role of CAO is no longer necessary to ensure flexibility.[21] The Proposed Rule Change would eliminate the requirement for the Board to elect a CAO and would remove related references to the CAO.[22] Where the removal of reference to the CAO reduces the number of individuals authorized to take some action under OCC's rules to two, the Proposed Rule Change would provide for the delegation of authority by the CEO and COO to a Designated Officer [23] in the event that the CEO and COO are both unavailable. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.[24]

C. Changes to the Role of Management Director

OCC's rules currently require that the Board include a Management Director, and that the Executive Chairman be elected to fill that position.[25] The Proposed Rule Change would remove the following requirements: (1) That the Board include a Management Director; and (2) that the Executive Chairman serve as Management Director. OCC believes that these changes would create more flexibility for filling the role of Management Director and could more easily accommodate potential future scenarios, for example, if the Management Director seat shifts from the Executive Chairman to the CEO.[26]

D. Conforming Changes

The positions of Executive Chairman, CEO, CAO, and Management Director are referenced throughout OCC's governing documents. Consistent with

[8] *See* Notice, 83 FR at 67763. *See also* Exchange Act Release No. 80168 (Mar. 7, 2017), 82 FR 13522 (Mar. 13, 2017) (Notice of Filing of a Proposed Rule Change concerning changes to OCC's management structure); Securities Exchange Act Release No. 80531 (Apr. 26, 2017), 82 FR 20502 (May 2, 2017) (SR–OCC–2017–002).

[9] OCC also installed a number of other senior executives in the period leading up to the adoption of its current management structure, including its current Chief Administrative Officer, head of government relations, Chief Compliance Officer (''CCO''), Chief Financial Officer, and President and Chief Operating Officer.

[10] *See* Notice, 83 FR at 67764.

[11] *See id.* OCC further represented that the separation of these roles would enable the Executive Chairman to serve an advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO. *See id.*

[12] *See* OCC By-Laws, Art. IV, Sec. 6(a).

[13] *Id.*

[14] Because the Executive Chairman would be less involved in day-to-day operational issues, the Proposed Rule Change would remove the requirement that the Executive Chairman must be selected from ''among the full-time employees of OCC'' to require only that the Executive Chairman be selected from ''among the employees of OCC.'' This amendment would allow the Executive Chairman to be a part-time employee.

[15] *See* Notice, 83 FR at 67765 (providing the full list of provisions that would no longer reference the Executive Chairman).

[16] *See id.* (providing the full list of provisions that would include a reference to the CEO).

[17] *See id.*

[18] *See* OCC By-Laws, Art. IV, Sec. 8.

[19] *See* Securities Exchange Act Release No. 80531 (Apr. 26, 2017), 82 FR 20502, 20503 (May 2, 2017) (SR–OCC–2017–002).

[20] *See id.*

[21] *See* Notice, 83 FR at 67765–66.

[22] OCC's Board would retain authority under the existing By-Laws to ''elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation.'' *See* OCC By-Laws, Art. IV, Sec. 1.

[23] *See* OCC By-Laws, Art. I, Sec. D(8). A Designated Officer must be of the rank of Senior Vice President or higher. *See id.*

[24] *See* Notice, 83 FR at 67766.

[25] *See* OCC By-Laws, Art. III, Sec. 1.

[26] *See* Notice, 83 FR at 67766.

the changes described above that would impact OCC's By-Laws and Rules, the Proposed Rule Change would make certain conforming amendments to the following charters: (1) Board Charter; (2) Audit Committee Charter (''AC Charter''); (3) Compensation and Performance Committee Charter (''CPC Charter''); (4) Governance and Nominating Committee Charter (''GNC Charter''); and (5) Risk Committee Charter (''RC Charter'').[27]

The Proposed Rule Change would generally make amendments to reflect the separation of those roles and the revised duties of each role pursuant to the amendments described above in the Board Charter, AC Charter, CPC Charter, GNC Charter, and RC Charter. Additionally, the Proposed Rule Change would amend the Board Charter to remove the CEO's role in certain Board matters due to the CEO position no longer being linked to the position of Executive Chairman. The Proposed Rule Change would amend the AC Charter as follows: (1) The CCO would report administratively to the CEO and functionally to the Audit Committee; (2) the Chief Audit Executive (''CAE'') would report administratively to the Executive Chairman and functionally to the Audit Committee; (3) the Audit Committee would consult the CEO in reviewing the performance of the Compliance function and the CCO; (4) the Audit Committee would consult the Executive Chairman in reviewing the performance of the Internal Audit function and the CAE. The Proposed Rule Change would amend the RC Charter to reflect that OCC's Chief Risk Officer would report administratively to the CEO and functionally to the Risk Committee.

The Proposed Rule Change would remove the references to the CAO from the Board Charter and CPC Charter. The Proposed Rule Change would also conform the description of the Management Director in the Board Charter to the changes described above.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[28] After carefully considering the Proposed Rule Change, the Commission finds the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(A) of the Exchange Act[29] and Rule 17Ad–22(e)(2) thereunder.[30]

A. Consistency With Section 17A(b)(3)(A) of the Exchange Act

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts, and transactions for which it is responsible, safeguard securities and funds in its custody or control or for which it is responsible, and to comply with the provisions of Section 17A of the Exchange Act and the rules and regulations thereunder.[31]

As described above, the Proposed Rule Change would amend OCC's senior leadership structure. The Proposed Rule Change would provide a balance between the groups involved in the management and oversight of OCC by separating the roles of Executive Chairman and CEO. The Commission believes that such a balance would support the Board's ability to engage with and challenge decisions by management.

The Proposed Rule Change would remove the requirement for OCC's Board to elect a CAO, which would also reduce the number of individuals authorized to act in certain situations. The separation of the roles of Executive Chairman and CEO would, however, account for the removal of the role of CAO in some instances, and the authority to delegate authority to Designated Officers, as described above, would account for the removal in other instances. The Commission believes that these structure changes, taken together with the removal of the role of CAO, would maintain OCC's current capacity to address both day-to-day and exigent circumstances as they arise.

As described above, the Proposed Rule Change would continue to allow for a Management Director, but would remove the requirements that there be a Management Director and that such a Management Director be the same person as the Executive Chairman. These changes would provide flexibility for filling the role of Management Director under potential future scenarios. The Commission believes that providing additional flexibility for filling the role of Management Director would support the functioning of OCC's Board in the future. Accordingly, based on the foregoing, the Commission believes that the Proposed Rule Change is consistent with the organizational and capacity requirements of Section 17A(b)(3)(A) of the Exchange Act.[32]

B. Consistency With Rule 17Ad–22(e)(2) Under the Exchange Act

Rule 17Ad–22(e)(2) under the Exchange Act requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that meet certain criteria.[33] Rule 17Ad–22(e)(2)(i) under the Exchange Act requires that such governance arrangements are clear and transparent.[34] Further, Rule 17Ad–22(e)(2)(v) under the Exchange Act requires that such governance arrangements specify clear and direct lines of responsibility.[35]

As described above, the Proposed Rule Change would separate the roles of Executive Chairman and CEO and remove the role of CAO. The Commission believes that separating the roles of Executive Chairman and CEO would promote clarity in each of the separate roles by removing any potential overlap. The Proposed Rule Change would also clarify the reporting lines of the function and members of senior management as described above (*e.g.,* the CAE would report to the Executive Chairman and the CCO would report to the CEO). Further, the Proposed Rule Change would not alter the direct reporting of members of senior management, such as the CAE, CCO, and CRO, to the Board and its committees. The Commission believes that these changes provide increased clarity around the reporting lines of these members of senior management. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the assignment of responsibilities and reporting are consistent with Exchange Act Rule 17Ad–22(e)(2).[36]

III. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed

[27] In its proposal, OCC noted that the Technology Committee Charter required no amendment. *See* Notice, 83 FR at 67766, n. 31.

[28] 15 U.S.C. 78s(b)(2)(C).

[29] 15 U.S.C. 78q–1(b)(3)(A).

[30] 17 CFR 240.17Ad–22(e)(2).

[31] 15 U.S.C. 78q–1(b)(3)(A).

[32] *Id.*

[33] 17 CFR 240.17Ad–22(e)(2).

[34] 17 CFR 240.17Ad–22(e)(2)(i).

[35] 17 CFR 240.17Ad–22(e)(2)(v).

[36] 17 CFR 240.17Ad-22(e)(2).

Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[37] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[38] that the Proposed Rule Change (SR–OCC–2018–015), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02735 Filed 2–19–19; 8:45 am]

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[37] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85126; File No. SR–NYSENAT–2019–01]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates To Revise the Requirements To Qualify for the Adding Tier 2 Credits

February 13, 2019.

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 January 31, 2019, NYSE National, Inc. (the ''Exchange'' or ''NYSE National'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates to revise the requirements to qualify for the Adding Tier 2 credits. The Exchange proposes to implement the rule change on February 1, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates to revise the requirements to qualify for the Adding Tier 2 credits.

The Exchange proposes to implement the rule change on February 1, 2019.

Proposed Rule Change

Currently, under Adding Tier 2, the Exchange offers the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO[4] in 1,000 or more symbols on an average daily basis, calculated monthly, and execute [sic] 0.25% or more Adding average daily volume (''ADV'') as a percentage of US consolidated ADV (''CADV''):

- $0.0005 per share for adding displayed orders;
- $0.0005 per share for orders that set a new Exchange BBO;[5]
- $0.0007 per share for adding non-displayed orders; and
- $0.0005 per share for adding MPL orders.

The Exchange proposes to revise the requirements for the Adding Tier 2 fees. Specifically, the Exchange proposes that the requirement for ETP Holders to execute 0.25% or more ADV as a percentage of US CADV be lowered to 0.20%. The other requirements for qualifying for Adding Tier 2 as well as the applicable fees would remain unchanged.

For example, in a given month of 20 trading days, if an ETP Holder quotes at least 5% of the NBBO in 3,000 securities each day for the first 10 days and quotes at least 5% of the NBBO in 2,400 securities each day for the last 10 days, the ETP Holder would have 2,700 securities on an average daily basis that meet the 5% NBBO requirement for the billing month. If that same ETP holder executes at least 15 million shares Adding ADV in that same month where US CADV is 7.5 billion shares, or 0.20% as a percentage of US CADV, the qualifications for Adding Tier 2 would be met.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that requiring ETP Holders to execute 0.20% or more Adding average daily volume as a percentage of US CADV in addition to quoting at least 5% of the NBBO in 1,000 or more symbols on an average daily basis, calculated monthly, in order to qualify for the Adding Tier 2 fees is reasonable, equitable and not unfairly discriminatory because it would encourage additional liquidity on the Exchange and because ETP Holders benefit from the greater amounts of liquidity that will be present on the Exchange. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it would continue to encourage ETP Holders to send orders, thereby contributing to robust levels of liquidity,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] To satisfy the 5% requirement, ETP Holders must maintain a bid or an offer at the NBB or the NBO for at least 5% of the trading day in round lots in a security for that security to count toward the tier requirement. The terms ''NBB,'' ''NBO,'' ''NBBO,'' and ''BBO'' are defined in NYSE National Rule 1.1.

[5] The term ''BBO'' is defined in Rule 1.1 to mean the best bid or offer that is a Protected Quotation on the Exchange. The term ''BB'' means the best bid that is a Protected Quotation on the Exchange and the term ''BO'' means the best offer that is a Protected Quotation on the Exchange.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) & (5).

which benefits all market participants. The proposed changes will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity that are present on the Exchange. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying ETP Holders that add liquidity to the Exchange and quote at the NBBO.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–NYSENAT–2019–01 and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02737 Filed 2–19–19; 8:45 am]

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[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 21, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street, NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Resolution of litigation claims; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: February 14, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–02905 Filed 2–15–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85122; File No. SR–CboeBYX–2019–002]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BYX Fee Schedule as It Relates to Pricing for the Use of Certain Routing Strategies

February 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2019, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the BYX fee schedule as it relates to pricing for the use of certain routing strategies. The text of the proposed rule change is attached [sic] as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the BYX fee schedule to change the pricing applicable to orders routed using the SLIM routing strategy in connection with planned changes to the System routing table.[3] SLIM is a routing strategy offered by the Exchange that is used to target certain low cost protected market centers by routing to those venues after accessing available liquidity on the BYX Book, and prior to routing to other trading centers included in the System routing table. The Exchange periodically changes the low cost venues targeted by the SLIM routing strategy to ensure that the venues prioritized for routing can be accessed at a low cost. Currently, three exchanges are included in the System routing table as low cost protected market centers: Cboe EDGA Exchange, Inc. (''EDGA''), Nasdaq BX, Inc. (''BX''), and New York Stock Exchange LLC (''NYSE''). Pursuant to Rule 11.13(b)(3), the Exchange has determined to modify the System routing table such that NYSE would no longer be listed as a low cost protected market center where orders are first routed after seeking available liquidity on the BYX Book. In addition, the Exchange has decided to add NYSE American LLC (''NYSE American'') and NYSE National, Inc. (''NYSE National'') as low cost protected market centers. These changes to the System routing table are scheduled to be introduced on February 1, 2019.

Currently, orders routed using the SLIM routing strategy are charged a fee of $0.00270 per share, except when routed to BZX or NYSE.[4] Orders routed to BZX using the SLIM routing strategy are charged a fee of $0.0030 per share,[5] and orders routed to NYSE using this routing strategy are charged a fee of $0.00280 per share.[6] The Exchange proposes a number of changes to these fees in connection with the changes to the routing table for SLIM.

First, in recognition of the fact that EDGA and BX can be accessed at a low cost today, the Exchange proposes to provide a rebate to orders routed to these exchanges using the SLIM routing strategy. As proposed, the rebate would be $0.00240 per share for orders routed to EDGA, and $0.00100 for orders routed to BX. The rebates are consistent with rebates currently offered for orders routed to EDGA and BX using the Destination Specific, TRIM, or TRIM2 routing strategies, which yield fee codes ''BJ'' and ''C,'' respectively. To effect the proposed change, the Exchange would therefore add SLIM to the list of routing strategies that yield fee code BJ and C when routed to EDGA or BX. In addition, the fee schedule currently provides that the rebates offered pursuant to fee codes BJ and C are applicable to eligible orders in all securities. EDGA and BX, however, do not provide rebates to orders that remove liquidity in securities priced below $1.00.[7] As such, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 11.13(b)(3). The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *Id.*

[4] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''SX.''

[5] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''SZ.''

[6] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, fee code ''D.''

[7] Orders that remove liquidity on EDGA for Tapes A, B, and C are neither charged a fee nor provided

proposes to amend the pricing for orders routed to these exchanges pursuant to fee codes BJ and C, such that no charge or rebate would be provided in securities priced below $1.00.

Second, the Exchange proposes to add two new fee codes, MX and NX, that relate to orders routed to NYSE American and NYSE National, respectively, using the SLIM routing strategy. Orders routed using the SLIM routing strategy would be charged a fee of $0.00020 per share if executed on NYSE American. If executed on NYSE National, those orders would be provided a rebate of $0.00200 per share in securities priced at or above $1.00, and no charge or rebate would be applied for securities priced below $1.00. The proposed fees and rebates chosen for routing to these venues generally reflect the current transaction fees and rebates available for accessing liquidity on those markets.[8]

Third, since the Exchange would now charge a low fee or pay a rebate for routing to all low cost protected market centers using the SLIM routing strategy, the Exchange proposes to increase the default fee charged to orders routed using the SLIM routing strategy to $0.00290 per share. This routing fee, designated under fee code SX, would apply to all orders routed using the SLIM routing strategy, except when routed to BX, BZX, EDGA, NYSE American, or NYSE National. Since NYSE would no longer be included as a low cost protected market center, the Exchange proposes to eliminate special pricing for orders routed to NYSE using the SLIM routing strategy under fee code D. Such orders would now pay the default routing fee for orders routed using this routing strategy, as described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[9] in general, and furthers the requirements of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed routing fee changes are appropriate as they reflect changes to the System routing table used to determine the order in which venues are accessed using the SLIM routing strategy. SLIM specifically targets certain equities exchanges that provide cheap executions or rebates to liquidity removing orders, and routes to those venues after trading with the BYX Book, and prior to accessing liquidity that may be available on other venues on the System routing table. The Exchange believes that the proposed changes reflect the intent of members when they submit routable order flow to the Exchange using the SLIM routing strategy.

The Exchange believes that it is reasonable and equitable to begin rebating orders routed to EDGA and BX using the SLIM routing strategy. Although the Exchange does not offer special pricing when routing to those markets using the SLIM routing strategy today, the Exchange does offer such incentives when routing to those markets using certain other routing strategies, including Destination Specific, TRIM, or TRIM2. As is the case for orders routed to EDGA and BX using those routing strategies, the proposed rebates applicable to the SLIM routing strategy are designed to reflect incentives offered to liquidity taking orders on these two venues, which operating using taker/maker pricing models that offer rebates to remove liquidity.

The Exchange also believes that it is reasonable and equitable to provide free executions, rather than rebates, for orders routed to EDGA and BX using the Destination Specific, TRIM, TRIM2, or SLIM routing strategies in securities priced below $1.00. Although EDGA and BX both generally provide rebates to orders that remove liquidity, as described above, those rebates are limited to securities priced at or above $1.00.[11] For orders that remove liquidity in securities priced below $1.00, EDGA charges no fee and provides no rebate, while BX instead charges a fee.[12] With the proposed changes to the routing fees, the Exchange would recoup some, but not all, of the cost associated with routing orders in lower priced securities to these markets on behalf of members that use the Destination Specific, TRIM, TRIM2, or SLIM routing strategies.

Similarly, the Exchange believes that it is reasonable and equitable to provide special pricing for orders routed to NYSE American and NYSE National using the SLIM routing strategy. As mentioned previously, the Exchange is adding these two exchanges to its list of low cost protected market centers, and wishes to provide the benefit of the rebate or lower fee provided by those markets to BYX members using the SLIM routing strategy. The Exchange believes that these changes may increase interest in the Exchange's SLIM routing strategy, in particular, by passing on better pricing to BYX members that choose to enter such orders on the Exchange, thereby encouraging additional order flow to be entered to the BYX Book.

The rebates provided to orders routed to NYSE National using the SLIM routing strategy would be limited to order price at or above $1.00 in light of the fact that NYSE National does not provide rebates to liquidity removing orders in securities priced below $1.00. For securities priced below $1.00, the Exchange would charge no fee and provide no rebate, which is equivalent to pricing on NYSE National.[13] Without limiting the proposed rebate for NYSE National to securities priced at or above $1.00, the Exchange would pay a significant rebate that would not be recouped via a rebate provided by the execution venue. The Exchange believes that is reasonable and equitable to limit routing rebates to circumstances where the Exchange would actually earn a rebate from the away venue in order to properly recoup the costs of accessing liquidity on such markets.

Given the proposed changes to the fees charged or rebates provided when routing low cost protected market centers, the Exchange also believes that it is reasonable and equitable to increase the fee charged when routing to other equities markets. Specifically, the Exchange charges a default routing fee for orders routed using the SLIM routing strategy that is, in effect, a blended fee designed to compensate the Exchange for routing to one of the venues not otherwise subject to special pricing. Since the Exchange is introducing special pricing for orders routed to low cost protected market centers, the venues subject to this pricing, would, on average, charge a higher execution fee for liquidity removing orders. Indeed, a number of the trading centers that are

a rebate in securities priced below $1.00. *See* Cboe EDGA U.S. Equities Exchange Fee Schedule, fee codes ''BB,'' ''N,'' ''W.'' Orders that remove liquidity on Nasdaq BX in such securities are charged a fee equal to 0.10% of the total transaction cost. *See* Nasdaq BX Rulebook, Equity 7, Section 118(b).

[8] NYSE American currently charges a fee for removing liquidity that is $0.00020 per share in securities priced at or above $1.00, and 0.25% of the total dollar value of the transaction in securities priced below $1.00. *See* NYSE American Equities Price List, I. Transaction Fees.

NYSE National currently provides a rebate of $0.00200 per share in securities priced at or above $1.00 for members that achieve their taking tier. *See* NYSE National Schedule of Fees and Rebates, I. Transaction Fees, B. Tiered Rates. Orders that remove liquidity in securities below $1.00 are executed without charge or rebate. *See* NYSE National, Schedule of Fees and Rebates, I. Transaction Fees, A. General Rates.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* supra note 7.

[12] *Id.*

[13] *See* supra note 8.

accessible using the SLIM routing strategy, including, for example, The Nasdaq Stock Market LLC (''Nasdaq'') and Cboe EDGX Exchange, Inc. (''EDGX''), charge a taker fee of $0.00300 per share.[14] The Exchange believes that the proposed increased routing fee for these orders reflects an appropriate blended rate for accessing liquidity on those markets, and would appropriately compensate the Exchange for the costs associated with routing to such venues. Furthermore, the Exchange believes that the changes to the System routing table would reduce the chance that an order is routed to a high cost venue since routing to low cost protected market centers is prioritized.

Finally, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as the proposed fees and rebates would apply equally to all members that use the Exchange to route orders using the associated routing strategy. The proposed fees are designed to reflect the fees charged and rebates offered by certain away trading centers that are accessed by Exchange routing strategies, and are being made in conjunction with changes to the System routing table designed to provide members with low cost executions for their routable order flow. Furthermore, if members do not favor the proposed pricing, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed routing fee changes are designed to reflect changes being made to the System routing table used to determine where to send certain routable orders, and generally provide better pricing to members for orders routed to low cost protected market centers using the Exchange's routing strategies. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2019–002 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–CboeBYX–2019–002. 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–CboeBYX–2019–002 and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02734 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Nasdaq, Equity Rules, Pricing Schedule; EDGX U.S. Equities Exchange Fee Schedule, Fee Codes and Associated Fees.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form T–4, SEC File No. 270–124, OMB Control No. 3235–0107

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection

of information to the Office of Management and Budget for approval.

Form T–4 (17 CFR 269.4) is a form used by an issuer to apply for an exemption under Section 304(c) (15 U.S.C. 77ddd(c)) of the Trust Indenture Act of 1939 (77 U.S.C. 77aaa *et seq.*). Form T–4 takes approximately 5 hours per response to prepare and is filed by approximately 3 respondents. We estimate that 25% of the 5 burden hours (1 hour per response) is prepared by the filer for a total reporting burden of 3 hours (1 hour per response × 3 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 13, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02756 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85128; File No. SR–ICEEU–2018–024]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICE Clear Europe Model Risk Governance Framework

February 13, 2019.

I. Introduction

On November 21, 2018, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a Model Risk Governance Framework (''MRGF'') and related Independent Validator Selection Guidelines (''Guidelines''). On December 21, 2018, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 31, 2018.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would adopt a new MRGF and related Guidelines. The MRGF would establish overall standards and principles for managing and mitigating model risk for all product categories that ICE Clear Europe clears.[5] Specifically, the MRGF would (1) establish a definition of model and model risk; (2) establish and define criteria for assessing the materiality and significance of models and model changes; (3) establish procedures for oversight and validation of models and model changes; and (4) establish related governance structures. The MRGF would apply to models developed internally, third-party models, and models shared with other group entities (but not to models in research and development or that are already retired), and would apply throughout the life cycle of all such models used by the Clearing House. In addition, the Guidelines would establish standards for the independence and competence of the persons that validate models pursuant to the MRGF.

A. Definition of Model and Model Changes

The MRGF would define a ''model'' as a quantitative method, system or approach that applies statistical, economic, financial or mathematical theories, techniques and assumptions to process input data into quantitative estimates.[6] The MRGF would also define ''model risk'' as the risk that a model does not perform as it was designed, either due to error or failure in the model specification or inappropriate use.[7]

The MRGF would assess the materiality of models based on the potential impact the related model risk may have on ICE Clear Europe and its clearing members. In particular, the MRGF would treat a model as material where the output of the model is the primary factor affecting risk management decisions relating to counterparty and liquidity risk.[8] The MRGF may also treat a model as material if it has a high error potential with sizeable impact resulting from: (1) Complexities in the data model and inputs (like complex manipulation of input data); (2) the modelling approach (such as reliance on a large number of assumptions); (3) the model output (such as a large number of other models dependent on the output); or (4) model users and operations (such as a large number of independent systems that use the model).[9]

With respect to model changes, the MRGF would categorize changes as significant and not significant. In determining whether a model change is significant, the MRGF would consider the size of resulting changes in risk requirements calculated by the model, alterations in the scope of model use and the risk profile of products covered, and the development of new model features.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment clarified Items 1(a) and 2(a) in the Form 19b–4 but did not change any other items in Form 19b–4, any exhibits to the filing, or the text of the proposed rule change.

[4] Securities Exchange Act Release No. 84933 (Dec. 21, 2018), 83 FR 67810 (Dec. 31, 2018) (SR–ICEEU–2018–024) (''Notice'').

[5] Capitalized terms not otherwise defined herein have the meaning given to them in the MRGF or the ICE Clear Europe rulebook.

[6] Notice, 84 FR at 67811.

[7] Notice, 84 FR at 67811.

[8] Notice, 84 FR at 67811.

[9] Notice, 84 FR at 67811, n.5.

[10] Notice, 84 FR at 67811.

B. Oversight and Validation of Models and Model Changes

The MRGF would set out a general oversight process for models throughout their life cycle, including development of new models, model changes, review of existing models, and model retirements. For new models, the MRGF would require that they be subject to validation before being approved and introduced into use.[11] For model changes, the MRGF would require that significant changes be validated before being approved using the same process as for new models.[12] The MRGF would validate model changes that are not significant in accordance with ICE Clear Europe's periodic re-validation pipeline, as discussed below.[13]

The MRGF would re-validate and assess the performance of models to determine whether they continue to be fit for use. The Risk Oversight Department (''ROD'') would establish a validation pipeline, meaning a periodic cycle for re-validation of existing models.[14] The ROD would establish the frequency of re-validation based on applicable regulatory requirements, which may be annually where required or more frequently as needed.[15] Similarly, the MRGF would require that performance assessments be conducted on a periodic basis at least annually, in accordance with applicable regulatory requirements.[16]

The MRGF would make the ROD responsible for conducting the independent validation (if done internally) at the appropriate frequency and coordinating an external independent validation when appropriate.[17] The Guidelines would establish both technical expertise and independence requirements for model validations.[18] The Guidelines would provide that the Clearing House may engage an external independent model validator when (1) there are insufficient internal resources to meet both the technical expertise and independence requirements for the model undergoing independent validation; (2) internal resources do not have the operational capacity to perform the validation within the required timeframe; or (3) otherwise at the discretion of the ROD.[19]

Under the MRGF and the Guidelines, ICE Clear Europe's Model Oversight Committee (''MOC'') would be required to review and approve the use of external independent model validators.[20] The ROD would maintain a list of external validators approved by the MOC.[21] The Guidelines would provide that the MOC may decide, for models deemed complex and material, to perform a competitive selection process for external independent validators. Similarly, the ROD may, with the consent of the MOC, split components of the independent model validation scope across one or more external independent validators.

The MRGF would also provide a process for model retirements and deactivations (retirement would permanently discontinue a model while deactivation would be a temporary discontinuation).[22] Prior to retiring or deactivating a model, the MRGF would require an impact assessment of the risks and consequences of such retirement or deactivation.

C. Governance

The MRGF would establish the roles of the MOC and ICEEU Board in controlling overall model risk, including reviewing and approving models and changes. Under the MRGF, the MOC would be responsible for model risk governance at an executive level and for advising the Board on material model risk.[23] Under the MRGF, the MOC also would be responsible for approving new models, model changes, retirement of models, the periodic validation cycle, remediation actions, external validators, and reviewing model performance assessments.[24] The MRGF would assign the ICE Clear Europe Board ultimate responsibility for model risk governance, approving material new models and significant model changes for material models, reviewing the actions of the MOC, reviewing performance of material models outside of acceptable levels for model risk, and reviewing impact assessments for the retirement of material models.[25]

The MRGF would further apply a three-tiered approach to the development and validation of models and changes. Specifically, the MRGF would: (1) Designate the owner of the models as the First Line; (2) designate the ROD as the Second Line; and (3) designate the Internal Audit Department as the Third Line. The First Line (owners of the models) would be responsible for ensuring that models are properly developed, implemented and used, establishing a model inventory, proposing new models, proposing model changes, proposing model retirements, conducting performance and impact assessments, and proposing and implementing remediation actions as needed. The Second Line (ROD) would be responsible for performing or overseeing independent validations, reviewing and performing performance assessments, establishing risk appetite metrics for model performance, establishing guidelines for validations and external validators, and reporting results of validations and assessments. The Third Line (Internal Audit Department) would be responsible for assessing the overall effectiveness of the MRGF and related governance policies and assessing independent validation work.[26]

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[27] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[28] and Rules 17Ad–22(e)(2)(i) and (v), (e)(3), (e)(4)(vii), (e)(6)(vii), and (e)(7)(vii) thereunder.[29]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[30]

As discussed above, the proposed rule change would adopt the MRGF and Guidelines. The MRGF would establish overall standards and principles for managing and mitigating model risk for all product categories that ICE Clear Europe clears. The MRGF would do so

[11] Notice, 84 FR at 67811.
[12] Notice, 84 FR at 67811.
[13] Notice, 84 FR at 67811.
[14] Notice, 84 FR at 67811.
[15] Notice, 84 FR at 67811.
[16] Notice, 84 FR at 67811.
[17] Notice, 84 FR at 67811.
[18] Notice, 84 FR at 67811.
[19] Notice, 84 FR at 67811.
[20] Notice, 84 FR at 67812.
[21] Notice, 84 FR at 67812.
[22] Notice, 84 FR at 67811.
[23] Notice, 84 FR at 67811.
[24] Notice, 84 FR at 67811.
[25] Notice, 84 FR at 67811.
[26] Notice, 84 FR at 67811.
[27] 15 U.S.C. 78s(b)(2)(C).
[28] 15 U.S.C. 78q–1(b)(3)(F).
[29] 17 CFR 240.17Ad–22(e)(2)(i) and (v), (e)(3), (e)(4)(vii), (e)(6)(vii), and (e)(7)(vii).
[30] 15 U.S.C. 78q–1(b)(3)(F).

by establishing processes for the oversight and validation of models and changes to models and defining related governance responsibilities. Finally, the Guidelines would help ensure the independence and competence of validations by establishing standards for model validators regarding independence and technical proficiency.

The Commission believes that these changes, taken as a whole, would help ICE Clear Europe establish and maintain effective and functioning models. For example, in requiring the validation of new models and significant model changes, the Commission believes that the MRGF would help ICE Clear Europe to identify and remediate possible errors in models and changes thereto before such models or changes are put into effect. Doing so may help ICE Clear Europe avoid the potential harm that could result from models that do not function properly, such as margin requirements that are not effective at mitigating risk. Similarly, the Commission believes that the Guidelines, in establishing standards for independence and technical proficiency of validators, would help ensure that validations are completed objectively and competently. Because biased or ineffective validations could miss potential errors in models and model changes, the Commission believes that the Guidelines may also help ICE Clear Europe avoid the potential harm that could result from models that do not function properly.

Given that ICE Clear Europe uses its models, such as its margin models, to manage and mitigate ICE Clear Europe's credit exposures to its Clearing Members and the risks associated with clearing security based swap-related portfolios, the Commission believes that the proposed rule change would enhance ICE Clear Europe's ability to avoid losses that could result from the mismanagement of such credit exposures and risks. Because such losses could disrupt ICE Clear Europe's ability to promptly and accurately clear security based swap transactions, by adopting the MRGF and the Guidelines, the Commission believes that the proposed rule change would enhance ICE Clear Europe's ability to promote the prompt and accurate clearance and settlement of securities transactions.

Similarly, appropriate management of ICE Clear Europe's credit exposures to its Clearing Members and the risks associated with clearing security based swap-related portfolios is critical to avoiding the realization of losses on such portfolios that could threaten ICE Clear Europe's ability to operate, thereby threatening access to securities and funds in ICE Clear Europe's control. Because the proposed rule change would improve the processes to review and maintain the models that ICE Clear Europe uses to manage and mitigate such exposures, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Finally, for both of these reasons, the Commission believes the proposed rule change is consistent with protecting investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[31]

B. Consistency With Rules 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) require that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[32]

As discussed above, the MRGF would define the responsibilities of the MOC and ICEEU Board in model review and approval. For example, under the MRGF, the MOC would be responsible for approving new models, model changes, and retirement of models, while the Board ultimately would be responsible for model risk governance, and approving material new models and significant model changes for material models, among other things. In doing so, the Commission believes that the MRGF would clearly and transparently define who is responsible for which aspect of oversight of the MRGF (*i.e.,* the MOC or the Board) and specify the responsibilities of the MOC and the Board under the MRGF.

Moreover, the proposed rule change would establish the responsibilities of the first line model owners, ROD, and ICE Clear Europe Internal Audit Department in performing certain functions under, and assessing the effectiveness of, the MRGF. For example, the MRGF would make the First Line responsible for developing models, the ROD, as the Second Line, responsible for validating models, and the Internal Audit Department, as the Third Line, responsible for assessing the effectiveness of the MRGF and validations. In doing so, the Commission believes the proposed rule change would improve the transparency of the governance related to the MRGF by defining the relevant responsibilities for the development and validation of models and the review of the overall effectiveness of the MRGF. The Commission believes these aspects of the MRGF would also clearly define the responsibilities of the first line model owners, ROD, and ICE Clear Europe Internal Audit Department with respect to the MRGF.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(2)(i) and (v).[33]

C. Consistency With Rule 17Ad–22(e)(3)

Rule 17Ad–22(e)(3) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICE Clear Europe which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by ICE Clear Europe, that are subject to review on a specified periodic basis and approved by the board of directors annually.[34]

As discussed above, the MRGF would require the review and validation of new models, existing models, and model changes, which the Commission believes would identify and remediate possible errors in models and changes thereto before such models or changes are put into effect. In this way, the Commission believes the MRGF would help reduce model risk at ICE Clear Europe. Moreover, the Commission believes the Guidelines would help ensure the objectivity and competence of validations by establishing standards for model validators regarding independence and technical proficiency. The Commission believes that competent and objective validations would, in turn, help to reduce model risk. Finally, the Commission believes that the governance aspects of the MRGF discussed above would help ensure that the MRGF and its processes are effectively reviewed and

[31] 15 U.S.C. 78q–1(b)(3)(F).

[32] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[33] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[34] 17 CFR 240.17Ad–22(e)(3).

maintained. Thus, the Commission believes that the proposed rule change would enable ICE Clear Europe to maintain a sound risk management framework for comprehensively managing its model risk.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(3).[35]

D. Consistency With Rules 17Ad–22(e)(4)(vii), (e)(6)(vii), and (e)(7)(vii)

Rule 17Ad–22(e)(4)(vii) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by performing a model validation for its credit risk models not less than annually or more frequently as may be required by its risk management framework.[36] Rule 17Ad–22(e)(6)(vii) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, requires a model validation for its margin system and related models to be performed not less than annually, or more frequently as may be contemplated by its risk management framework.[37] Rule 17Ad–22(e)(7)(vii) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by ICE Clear Europe, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, among other things, performing a model validation of its liquidity risk models not less than annually or more frequently as may be contemplated by its risk management framework.[38]

As discussed above, the MRGF would specify the frequency of model validations. Specifically, the MRGF would provide that model validations shall comply with applicable regulatory requirements, in particular in regards to annual validation cycles, and that model performance assessments shall also be conducted on a periodic basis, with cycles no greater than one year.

The Commission believes that these aspects of the MRGF would help ensure that ICE Clear Europe complies with the aspects of Rules 17Ad–22(e)(4)(vii), (e)(6)(vii), and (e)(7)(vii)[39] that require annual model validations by providing that the frequency of model validations shall comply with applicable regulatory requirements, in particular in regards to annual validation cycles, and that model performance assessments shall also be conducted on cycles no greater than one year.

Therefore, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(4)(vii), (e)(6)(vii), and (e)(7)(vii).[40]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[41] and Rules 17Ad–22(e)(2)(i) and (v), (e)(3), (e)(4)(vii), (e)(6)(vii), and (e)(7)(vii) thereunder.[42]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[43] that the proposed rule change, as modified by Amendment No. 1 (SR–ICEEU–2018–024), be, and hereby is, approved.[44]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02733 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 240.17Ad–22(e)(3).

[36] 17 CFR 240.17Ad–22(e)(4)(vii).

[37] 17 CFR 240.17Ad–22(e)(6)(vii).

[38] 17 CFR 240.17Ad–22(e)(7)(vii).

[39] 17 CFR 240.17Ad–22(e)(4)(vii), (e)(6)(vii), and (e)(7)(vii).

[40] 17 CFR 240.17Ad–22(e)(4)(vii), (e)(6)(vii), and (e)(7)(vii).

[41] 15 U.S.C. 78q–1(b)(3)(F).

[42] 17 CFR 240.17Ad–22(e)(2)(i) and (v), (e)(3), (e)(4)(vii), (e)(6)(vii), and (e)(7)(vii).

[43] 15 U.S.C. 78s(b)(2).

[44] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85119; File No. SR–CboeBZX–2019–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

February 13, 2019.

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 January 30, 2019, Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to list and trade shares of SolidX Bitcoin Shares (the ''Fund'') issued by the VanEck SolidX Bitcoin Trust (the ''Trust''), under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The shares of the Trust are referred to herein as the ''Shares.''

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[3] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[4] SolidX Management LLC is the sponsor of the Trust (''Sponsor''). The Trust will be responsible for custody of the Trust's bitcoin. SolidX Management LLC is a wholly-owned subsidiary of SolidX Partners Inc. Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator''), transfer agent (''Transfer Agent'') and the custodian, with respect to cash, (''Cash Custodian'') of the Trust. Foreside Fund Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' [5] of Shares. Van Eck Securities Corporation (''VanEck'') provides assistance in the marketing of the Shares.

The Trust was formed as a Delaware statutory trust on September 15, 2016 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets will consist of bitcoin [6] held by the Trust utilizing a secure process as described below in ''bitcoin Security and Storage for the Trust''. The Trust will not normally hold cash or any other assets, but may hold a very limited amount of cash in connection with the creation and redemption of Baskets and to pay Trust expenses, as described below.

According to the Registration Statement, the Trust will invest in bitcoin only. The activities of the Trust are limited to: (1) Issuing Baskets in exchange for the cash and/or bitcoin deposited with the Cash Custodian or Trust, respectively, as consideration; (2) purchasing bitcoin from various exchanges and in OTC transactions; (3) selling bitcoin (or transferring bitcoin, at the Sponsor's discretion, to pay the Management Fee) as necessary to cover the Sponsor's Management Fee, bitcoin Insurance Fee, Trust principals' and employees' salaries, expenses associated with securing the Trust's bitcoin and Trust expenses not assumed by the Sponsor and other liabilities; (4) selling bitcoin as necessary in connection with redemptions; (5) delivering cash and/or bitcoin in exchange for Baskets surrendered for redemption; (6) maintaining insurance coverage for the bitcoin held by the Trust; and (7) securing the bitcoin held by the Trust.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[7] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''),[8] and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is for the Shares to reflect the performance of the price of bitcoin, less the expenses of the Trust's operations. The Trust intends to achieve this objective by investing substantially all of its assets in bitcoin traded primarily in the over-the-counter (''OTC'') markets, though the Trust may also invest in bitcoin traded on domestic and international bitcoin exchanges, depending on liquidity and otherwise at the Trust's discretion. The Trust is not actively managed. It does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of bitcoin.

Subject to certain requirements and conditions described below and in the Registration Statement, the Trust, under normal market conditions,[9] will use available offering proceeds to purchase bitcoin primarily in the OTC markets, without being leveraged or exceeding relevant position limits.

Trust Issued Receipts—Standard of Review

Section 6(b)(5) and the Applicable Standards

Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt as laid out under Rule 14.11(f). The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act and, as is applicable here, the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices. In its recent analysis of commodity-based exchange-traded products (''Commodity ETPs''), the Commission has focused on this particular language of Section 6(b)(5) of the Act and states that a proposed rule change must offer record evidence to demonstrate that underlying markets are ''regulated markets'' ''of significant size.'' The Commission has interpreted the terms ''significant market'' and ''market of significant size'' to include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.

Cboe believes that, based on previous application of the standard, the market for Bitcoin Futures [10] is a regulated

[3] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[5] The Trust will issue and redeem ''Baskets'', each equal to a block of 5 Shares, only to ''Authorized Participants''. See ''Creation and Redemption of Shares'' below.

[6] A ''bitcoin'' is an asset that can be transferred among parties via the internet, but without the use of a central administrator or clearing agency (''bitcoin''). The asset, bitcoin, is generally written with a lower case ''b''. The asset, bitcoin, is differentiated from the computers and software (or the protocol) involved in the transfer of bitcoin among users, which constitute the ''Bitcoin Network''. The asset, bitcoin, is the intrinsically linked unit of account that exists within the Bitcoin Network. See ''bitcoin and the Bitcoin Industry'' below.

[7] 15 U.S.C. 80a–1.

[8] 17 U.S.C. 1.

[9] Consistent with the definition in Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[10] Both Cboe Futures Exchange, Inc. (''CFE'') and Chicago Mercantile Exchange, Inc. (''CME''), both members of the Intermarket Surveillance Group, have offered contracts for bitcoin futures products since 2017. While the CFE bitcoin futures contracts and the CME bitcoin futures contracts (collectively, the ''Bitcoin Futures'') differ in certain of their

Continued

market of significant size with which the Exchange has in place comprehensive surveillance sharing agreements and, thus, the Commission should approve this proposal.[11] In addition, the Exchange also believes that there are sufficient other means to prevent fraudulent and manipulative acts and practices in the Shares, as was presented as an alternate means to demonstrate that a proposal is consistent with Section 6(b)(5) of the Act in the in the order disapproving SR–CboeBZX–2018–001 (the ''GraniteShares Disapproval Order'').[12] Specifically, the Exchange believes that the collective effect of the following factors are sufficient to prevent fraudulent and manipulative acts and practices in the Shares: [13] (i) The regulated nature of each of the firms that make up the MVIS® Bitcoin OTC Index (the index that is used to price the Shares, as further described below) (the ''MVBTCO''); [14] (ii) the notional volume of trading [15] and liquidity [16] available on the OTC Trading Desks; (iii) the principal to principal nature of the OTC Trading Desks; and (iv) in addition to its standard surveillance procedures, the Exchange will have in place a comprehensive surveillance sharing agreement with each of the OTC Trading Desks prior to the Shares listing on the Exchange.[17] Each of these points is further discussed below.

Precedent—Dry Bulk Shipping Futures

Looking at the limited instances in which the Commission has included in the record for an approval order an affirmative statement about a ''significant regulated market'' provides some insight, but very little specificity as to how the standard is applied to proposals that are approved. Of particular interest is the approval order for the Breakwave Dry Bulk Shipping ETF (the ''Shipping Futures ETF'') which is designed to provide exposure to the daily change in the price of dry bulk freight futures: An ETP that provides exposure to a unique underlying instrument with no direct precedent for approval. Looking to the language in the approval order for the Shipping Futures ETF, the order states: ''[t]he Commission notes that the Exchange has represented that the Freight Futures trade on well-established, regulated markets that are members of the ISG. The Commission finds that the Exchange will be able to share surveillance information with a significant regulated market for trading futures on dry bulk freight.'' [18] The Approval Order includes no additional analysis that specifically discusses whether the markets with which the listing exchange will be able to share surveillance information related to freight futures, which the Shipping Futures ETF will invest substantially all of its assets in,[19] are significant regulated markets. Importantly, the Approval Order included no mention of the listing exchange establishing the existence of other means to sufficiently prevent fraudulent and manipulative acts and practices.

Looking deeper, the Approval Order also states that:

> Freight Futures are financial instruments that trade off-exchange but then are cleared through an exchange. Market participants communicate their buy or sell orders through a network of execution brokers mainly through phone or instant messaging platforms with specific trading instructions related to price, size, and type of order. The execution broker receives such order and then attempts to match it with a counterparty. Once there is a match and both parties confirm the transaction, the execution broker submits the transaction details including trade specifics, counterparty details and accounts to the relevant exchange for clearing, thus completing a cleared block futures transaction. The exchange will then require the relevant member or FCM to submit the necessary margin to support the position similar to other futures clearing and margin requirements.[20]

That is to say, freight futures trades occur off-exchange and are coordinated through a broker network, mostly through phone and instant messaging, and it is only post-trade that any information is shared with a clearing exchange for the contracts to be cleared and for margin requirements to be communicated.

The Approval Order also notes that the liquidity in freight futures has generally been constant over the last five years and open interest represents more than $3 billion.[21] The Approval

implementation details, Bitcoin Futures generally trade and settle like any other cash-settled commodity futures contracts.

[11] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin itself is particularly resistant to price manipulation. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply, making it particularly difficult to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[12] *See* Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) at 3.

[13] While not directly related to the issue of manipulation, the Exchange also notes that the Sponsor expects that the Shares will be purchased primarily by institutional and other substantial investors (such as hedge funds, family offices, private wealth managers and high-net-worth individuals), which will provide additional liquidity and transparency to the bitcoin market in a regulated vehicle such as the Trust. With an estimated initial per-share price equivalent to 25 bitcoin, the Shares will be cost-prohibitive for smaller retail investors while allowing larger and generally more sophisticated institutional investors to gain exposure to the price of bitcoin through a regulated product while eliminating the complications and reducing the risk associated with buying and holding bitcoin.

[14] As further described below, Genesis Global Trading, Inc. (''Genesis'') is a FINRA registered broker-dealer, Cumberland DRW LLC (''Cumberland'') is an affiliate of DRW Execution Services, LLC, a FINRA registred broker-dealer, and Circle Financial (''Circle'') is awaiting FINRA approval of its purchase of SI Securities, LLC, a FINRA registered broker-dealer. For purposes of this filing, Genesis, Cumberland, and Circle are collectively referred to as the ''OTC Trading Desks.''

[15] The Sponsor has indicated that there are tens of millions to hundereds of millions of dollars of bitcoin traded on the OTC Trading Desks on a daily basis.

[16] Each constituent firm offers and will continue to offer firm, executable quotes of at least $250,000 depth on both the bid and ask at all times.

[17] The Trust maintains crime, excess crime and excess vault risk insurance coverage underwritten by various insurance carriers that will cover the entirety of the Trust's bitcoin holdings. While the Trust remains fully confident in its system for securing its bitcoin, insurance coverage of all of the Trust's bitcoin holdings eliminates exposure to the risk of loss to investors through fraud or theft, which in turn eliminates most of the custodial issues associated with a series of Commodity-Based Trust Shares based on bitcoin.

[18] *See* Securities Exchange Act Release No. 82390 (December 22, 2017), 82 FR 61625 (December 28, 2017) (the ''Approval Order'') at 30.

[19] *Id* at 5.

[20] *See* Approval Order at 12.

[21] *Id* at 14.

Order didn't include any statistics about the daily market-wide trading volume, but the sponsor of the Shipping Futures ETF estimates a daily volume of $50–100 million in freight futures.[22]

While the Approval Order did include some background about the dry bulk freight industry, dry bulk freight charter rates, and the indexes designed to track those rates, there is no discussion or additional facts included that can be used to infer that the market for freight futures is a significant market. There was also no discussion about whether the capacity in which exchanges participate in the freight futures market constituted a regulated market. Because the Approval Order includes no specific mention of the factors used to determine that the freight futures market is significant and regulated, the best reference is to look to the most obvious factors and where the Commission retroactively provided guidance as to the basis for determining that the market was a significant, regulated market.[23]

First, it's arguable based on the description in the Approval Order that the exchanges' role in the freight futures ecosystem is not even that of a ''market,'' but rather as a trade reporting facility and clearing venue. The Commission obviously determined that even the limited capacity in which the exchanges are involved in freight futures constituted a ''market,'' but comparing that capacity where message and phone based trades are reported after the fact to an exchange to the fully transparent order books in Bitcoin Futures, the regulatory role and the information available to surveil for manipulative activity are both significantly greater in the Bitcoin Futures markets at CFE and CME. As such, the Exchange represents that Bitcoin Futures trade on regulated markets that are members of the ISG.

Second, the statistics related to Bitcoin Futures compare favorably to freight futures.[24] For instance, the notional average daily volume for Bitcoin Futures in the third quarter and fourth quarter of 2018 were more than $150 million and $121 million, respectively,[25] as compared to the estimate of $50–100 million per day for freight futures. Moreover, approximately $44.1 billion in Bitcoin Futures traded in 2018[26] and more than $7.7 billion in Bitcoin Futures traded in the fourth quarter of 2018, even as the price of bitcoin declined.[27] Further, open interest in Bitcoin Futures was approximately $86 million as of December 31, 2018.[28] Stated another way, approximately 5.8 million bitcoin worth of Bitcoin Futures traded in 2018 (more than 30% of the current total bitcoin supply), more than 1.5 million bitcoin worth traded in the fourth quarter alone (more than 4% of the current total bitcoin supply), and more than 22,600 bitcoin worth of open interest exists in Bitcoin Futures. Looking at these numbers, the liquidity in Bitcoin Futures was relatively consistent over 2018. Given the favorable comparison to freight futures, the Exchange believes that the significant trading volume in Bitcoin Futures, especially as it relates to the total bitcoin supply, makes the market for Bitcoin Futures a significant market.[29]

Volatility and Manipulation

The Exchange also takes issue with the implication that the price volatility in bitcoin implies that the price of bitcoin is being manipulated and, thus, the underlying markets cannot be significant and regulated. Looking at the history of the Baltic Dry Index (the ''BDI''), which is a composite index designed to reflect the broader dry bulk shipping industry and which the Approval Order states ''is a common industry measure of dry bulk rates'' that ''has reflected the volatility of charter rates over the last 15 years,'' the dry bulk shipping industry often experiences even greater periods of volatility than the price of bitcoin. For instance, the BDI hit a record high of 11,793 on May 20, 2008 and proceeded to fall to 663 by December 5, 2008, a decline of nearly 95% over approximately six and a half months. While that was the largest decline, it is one of numerous significant price declines in the recent history of the BDI. For instance, from August 3, 2015 to February 8, 2016, the BDI went from 1200 to 291 (−74.6% over six months). From December 9, 2013 to July 14, 2014 the BDI went from 2330 to 732 (−68.6% over seven months) and further fell to 513 on February 7, 2015 (total decline of 78% over 14 months).[30] Even since the Approval Order was issued, the BDI dropped from 1702 in December 2017 to 948 in April (−44.4% in five months), bounced back to 1773 in July and dropped to 1008 in November (−43.2% in five months). The price of the fund (and investors' returns) reflects this volatility. Just like the price of bitcoin, the price of dry bulk shipping (and thus the BDI) is dependent on the complex interaction of natural market forces, which can result in significant price movement over short periods of time as supply or demand adjust.

[22] *See* page 3 of the slide show available at: *http://www.drybulketf.com/assets/ETFMG-BDRY-ETF-Investment-Strategy.pdf.*

[23] The GraniteShares Disproval Order provided some additional insight into the basis for determining that the dry bulk shipping futures market was a significant, regulated market than was originally included in the Approval Order, as further described below.

[24] As noted above, the GraniteShares Disapproval Order provided more detail about the analysis than the Approval Order itself, pointing out that the length of time that the futures had been trading (''at least a dozen years'') and that the proposal included more than just daily volume figures, but also included statistics related to open interest, yearly volume, and distribution of open interest across contract types and had represented that liquidity had remained relatively constant over a five-year period. The GraniteShares Disapproval Order also noted that the listing exchange had represented that ''the Freight Futures trade on well-established, regulated markets that are members of the ISG.'' *See* GraniteShares Disapproval Order at 24.

[25] All statistics herein are based on publicly available statistics from CFE and CME and a bitcoin price of $7107, $6691, $6593, $6478, $5452, and $3720, for July through December, respectively, and $7558 for 2018, which was the approximate average daily price of bitcoin in 2018.

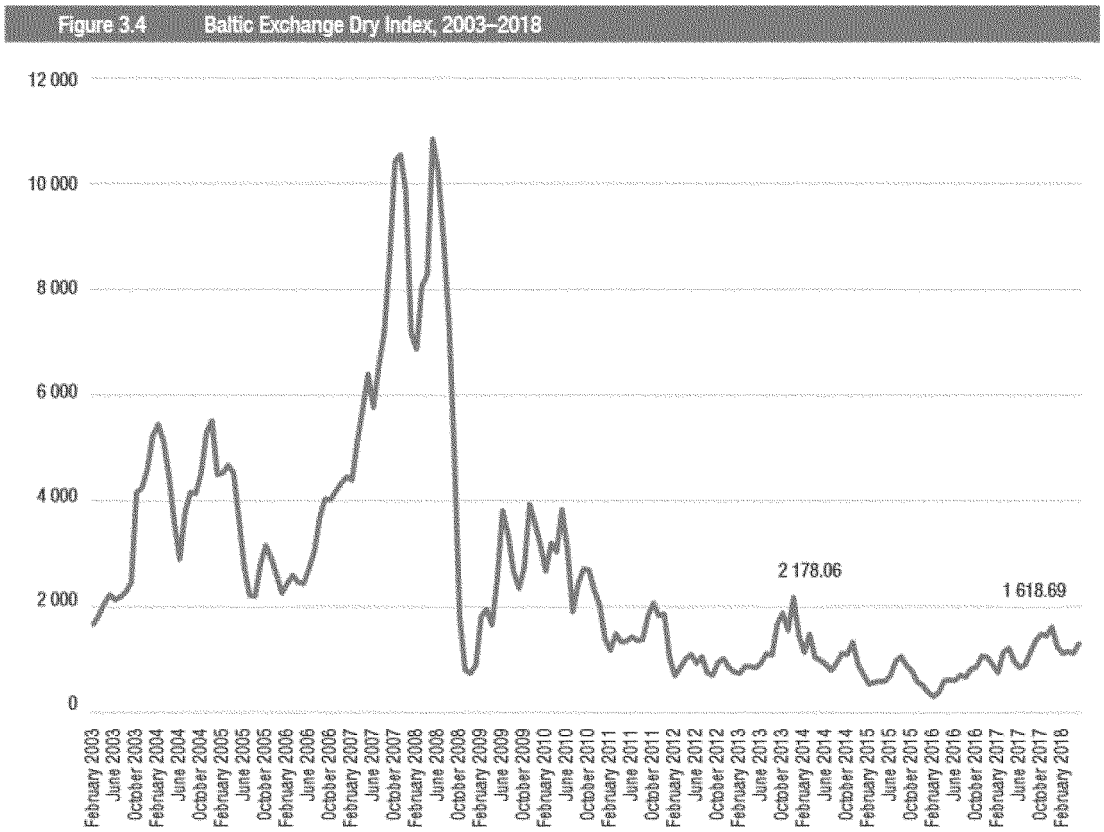
[26] Based on publicly available statistics from CFE and CME and a bitcoin price of $7558, which was the approximate average daily price of bitcoin in 2018.

[27] Based on publicly available statistics from CFE and CME and a bitcoin price of $6478, $5452, and $3720, for October, November, and December, respectively, which were each the approximate average daily price of bitcoin during those months.

[28] Based on publicly available statistics from CFE and CME and a bitcoin price of $3791, which was the approximate price of bitcoin on December 31, 2018.

[29] The Exchange also notes that there has been a strong correlation between the price of Bitcoin Futures and the bitcoin spot price over the more than year-long trading history of Bitcoin Futures, which is indicative of the easily arbitrageable bitcoin spot and Bitcoin Futures prices. *See* Memorandum to File No. SR–CboeBZX–2018–040, November 28, 2018, available at: *https://www.sec.gov/comments/sr-cboebzx-2018-040/srcboebzx2018040-4691015-176590.pdf.*

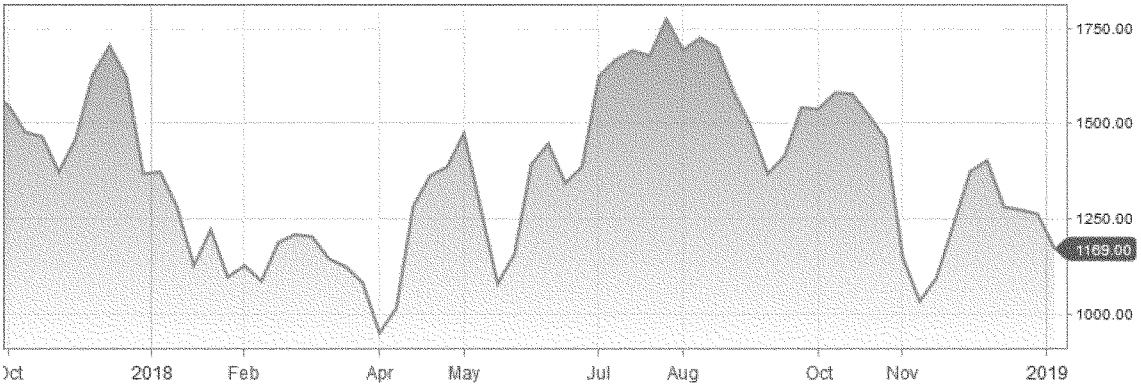
[30] The BDI is a composite index made up of sub-indices that track the Capesize, Panamax, Supramax, and Handysize charter rates. According to the Approval Order, the reference indexes for the dry bulk shipping fund track the charter rate for only Capesize, Panamax, and Supramax, meaning that, the fund in the Approval Order excludes Handysize rates. Publicly available information indicates that Capesize, Panamax, and Supramax rates have experienced similar, if not more pronounced, volatility as the BDI index over the same period of review. For example, the Baltic Capesize Index fell from 18,749 in May 2008 to 838 in November 2008 (96.6%).



Source: UNCTAD secretariat calculations, based on data from the Baltic Exchange.

Notes: The Index is made up of 20 key dry bulk routes measured on a time charter basis and covers Handysize, Supramax, Panamax and Capesize dry bulk carriers, which carry commodities such as coal, iron ore and grain. Index base: 1 November 1999 = 1,334 points. [31]

Baltic Exchange: Baltic Dry Index [32]



Further to this point, the Exchange emphasizes that the standard applicable under Section 6(b)(5) of the Act is not that there must be a complete absence of manipulation in the underlying market. In fact, the Commodity Futures Trading Commission (the ''CFTC'') significantly increased the number of enforcement cases it brought in fiscal year 2018 related to manipulative conduct and spoofing,[33] including bringing cases involving futures related to gold, silver, and S&P 500 futures contracts, among others,[34] each of which are also the underlying reference asset for numerous ETPs. As noted in the GraniteShares Disapproval Order, such manipulation on regulated markets provides regulators, including the listing self-regulatory organization, with

[31] Chart sourced from United Nations Conference on Trade and Development, Review of Maritime Transport 2018.

[32] Chart sourced from *cnbc.com.*

[33] *See* 2018 Annual Report on the Division of Enforcement at the Commodity Futures Trading Commission, available: *https://www.cftc.gov/sites/default/files/2018-11/ENFAnnualReport111418_0.pdf.*

[34] *See* James M. McDonald, *Statement in Connection with Manipulation and Spoofing Filings* (Jan. 29, 2018). *https://www.cftc.gov/PressRoom/SpeechesTestimony/mcdonaldstatement012918.*

a window into such manipulative trading activity, leaving them better able to detect, understand, and deter potential manipulation in the ETP and the underlying reference asset. Based on the favorable comparison laid out above between the Bitcoin Futures market and the dry bulk shipping futures market combined with the Commission's determination that the dry bulk shipping market is a significant, regulated market, the Exchange believes that the Bitcoin Futures market is similarly significant and regulated and would provide the window described above into potential manipulation in the Shares. As further described below, the Exchange will also be able to obtain information about bitcoin transactions, trades and market data from each of the OTC platforms that are included in the MVBTCO and from bitcoin exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement, as well as certain additional information that is publicly available through the Bitcoin blockchain.

Basis for Approval

This analysis of the Approval Order is not to say that the Approval Order should not have been issued—to the contrary, Cboe is only asking that this proposal be reviewed through the same lens as similar precedent and believes that such an analysis would result in this proposal being approved. The Commission's approval of this or any proposal to list and trade an ETP is not an endorsement of the underlying asset and especially is not a guarantee against the ETP being an extremely risky and/or volatile investment. Rather, it signifies that the benefits to end investors that want exposure to a particular asset class from having a regulated and transparent U.S. exchange traded vehicle outweigh the applicable risk of manipulation. With this in mind, Cboe believes that the Bitcoin Futures market is a significant, regulated market, especially when compared to the dry bulk shipping futures market described in the Approval Order, and therefore the Commission should approve this proposal. Further, even if the Commission were to determine that the Bitcoin Futures market is not a significant, regulated market, the Exchange believes that the regulated nature of each of the firms that make up the MVIS® Bitcoin OTC, the nature of trading and liquidity available on each of its constituents, and the comprehensive surveillance sharing agreements that the Exchange will have in place with each of the OTC Trading Desks, constitutes sufficient record evidence to demonstrate that there are other means to prevent fraudulent and manipulative acts and practices in the Shares.

Bitcoin Price Index

The Fund will use the MVBTCO to calculate the Trust's net asset value (''NAV''). The MVBTCO represents the value of one bitcoin in U.S. dollars at any point in time based on executable bids and asks derived from constituent bitcoin OTC platforms.[35] The index also generates a closing price as of 4:00 p.m., Eastern Time (''E.T.''), each weekday, which is the value used to calculate the Trust's NAV. The index price and the closing price are calculated using the same methodology. The intra-day levels of the MVBTCO incorporate the real-time price of bitcoin based on executable bids and asks derived from constituent bitcoin OTC platforms that have entered into an agreement with MV Index Solutions GmbH (''MVIS'') to provide such information.

The intra-day price and closing level of the MVBTCO are calculated using a proprietary methodology collecting executable bid/ask spreads and calculating a mid-point price from several U.S.-based bitcoin OTC platforms and is published at or after 4:00 p.m., E.T., each weekday. The MVBTCO is published to two decimal places rounded on the last digit. The MVBTCO has been live since November 20, 2018 and additional information about the index can be found on the MVBTCO's website (*https://www.mvis-indices.com/indices/digital-assets/mvis-bitcoin-us-otc-spot*). MVIS is the index sponsor and calculation agent for the MVBTCO. The Sponsor has entered into a licensing agreement with MVIS to use the MVBTCO. The Trust is entitled to use the MVBTCO pursuant to a sub-licensing arrangement with the Sponsor.

The MVBTCO calculates the intra-day price of bitcoin every 15 seconds, including the closing price as of 4:00 p.m. E.T. The bitcoin OTC platforms included in the MVBTCO are U.S.-based entities. These platforms are well established institutions that comply with anti-money laundering (''AML'') and know your customer (''KYC'') regulatory requirements with respect to trading counterparties and include entities that are regulated by the SEC and FINRA as registered broker-dealers and affiliates of broker-dealers.

The logic utilized for the derivation of the intra-day and daily closing index level for the MVBTCO is intended to analyze actual executable bid/ask spread data, verify and refine the data set and yield an objective, fair-market value of one bitcoin throughout the day and as of 4:00 p.m. E.T. each weekday, priced in U.S. dollars. As discussed herein, the MVBTCO intra-day price and the MVBTCO closing price are collectively referred to as the MVBTCO price, unless otherwise noted.

The key elements of the algorithm underlying the MVBTCO include:

- Equal Weighting of OTC Platforms: This mitigates the impact of spikes at single platforms.
- Using executable bid/ask spreads and the respective mid-point prices, which are consistently available.

The Sponsor is not aware of any bitcoin derivatives currently trading based on the MVBTCO.

OTC Trading

OTC trading of bitcoin is generally accomplished via bilateral agreements on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. The OTC market provides a relatively flexible market in terms of quotes, price, size and other factors. The OTC market has no formal structure and no open-outcry meeting place. Parties engaging in OTC transactions will agree upon a price—often via phone or email—and one of the two parties would then initiate the transaction. For example, a seller of bitcoin could initiate the transaction by sending the bitcoin to the buyer's bitcoin address. The buyer would then wire U.S. dollars to the seller's bank account. The OTC Trading Desks are the three largest participants in the U.S. dollar OTC bitcoin trading market. Based on its observations and experience in the market, the Sponsor estimates that the U.S. dollar OTC bitcoin trading volume globally represents on average approximately 25–50% of the trading volume of bitcoin traded globally in U.S. dollars on U.S. dollar-denominated bitcoin exchanges.

According to the Registration Statement, transaction costs in the OTC market are negotiable between the parties and therefore vary with some participants willing to offer competitive prices for larger volumes, although this will vary according to market conditions. Cost indicators can be obtained from OTC trading platforms as well as various information service providers, such as the bitcoin price

[35] As noted above, each OTC Trade Desk offers constant, executable bids and offers of at least $250,000 worth of bitcoin. The index value is based on these bids and offers, the logic for which is further described below. The OTC Trading Desks are the three largest participants in the U.S. dollar OTC bitcoin trading market. The Exchange will have in place a comprehensive surveillance sharing agreement with each of the OTC Trading Desks prior to the Shares listing on the Exchange.

indexes and bitcoin exchanges. OTC trading tends to be in large blocks of bitcoin and between institutions.

The Trust intends to buy and sell bitcoin in the OTC bitcoin market. The Sponsor currently expects that often it will be more cost efficient for the Trust to effect large trades (*e.g.,* $500,000 or greater) in the OTC market rather than on a bitcoin exchange. The Trust therefore expects to conduct most of its trading in the OTC bitcoin market, primarily on the OTC platforms that comprise the MVBTCO. As noted above, each OTC Trade Desk offers constant, executable bids and offers of at least $250,000 worth of bitcoin and offers near real-time quotes for tens of millions of dollars of bitcoin and, in most circumstances, minimal slippage.

When buying and selling bitcoin in the OTC market, the Trust will consider various market factors, including the total U.S. dollar size of the trade, the volume of bitcoin traded across the various U.S. dollar-denominated bitcoin exchanges during the preceding 24-hour period, available liquidity offered by OTC market participants, and the bid and ask quotes offered by OTC market participants. The Trust's goal is to fill an order at the best possible price.

To the extent a Basket creation or redemption order necessitates the buying or selling of a large block of bitcoin (*e.g.,* an amount that if an order were placed on an exchange would potentially move the price of bitcoin), the Sponsor represents that placing such a trade in the OTC market may be advantageous to the Trust. OTC trades help avoid factors such as potential price slippage (causing the price of bitcoin to move as the order is filled on the exchange), while offering speed in trade execution and settlement (an OTC trade can be executed immediately upon agreement of terms between counterparties) and privacy (to avoid other market participants entering trades in advance of a large block order). OTC bitcoin trading is typically private and not regularly reported. The Trust does not intend to report its OTC trading. The Trust has established delivery-versus-payment like (''DVP'') and receive-versus-payment like (''RVP'') trading arrangements with its trading counterparties pursuant to which the Trust will be able to minimize counterparty risk. These arrangements are on a trade-by-trade basis and do not bind the Trust to continue to trade with any counterparty.

The Trust expects to take custody of bitcoin within one business day of receiving an order from an Authorized Participant to create a Basket (as defined in ''Creation and Redemption of Shares'' below).

The dual elements of principal to principal trading combined with the large size at which trades are effected should effectively eliminate the ability of market participants to manipulate the market with small trades as may be the case on any individual exchange. As noted above, the OTC desks that comprise the MVBTCO with which the Trust intends to effect transactions are well established institutions that comply with AML and KYC regulatory requirements with respect to trading counterparties and include entities that are regulated by the SEC and FINRA as registered broker-dealers and affiliates of broker-dealers. It is the Sponsor's position that the OTC desks have a better measure of the market than any exchange-specific reference price, whether individually or indexed across multiple exchanges.

Bitcoin Trading on Exchanges

According to the Registration Statement, to the extent the Trust conducts bitcoin trading on an exchange, it expects to do so on the following U.S. dollar-denominated bitcoin exchanges: Bitstamp (located in Slovenia and with an office in the U.K.), Coinbase (located in California), Gemini (located in New York), itBit (located in New York), bitFlyer (located in New York) and Kraken (located in San Francisco). All of these exchanges follow AML and KYC regulatory requirements.

Bitcoin Price Transparency

In addition to the price transparency of the MVBTCO, with respect to the OTC market, and the bitcoin exchange market itself, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Sponsor expects that the dissemination of information on the Trust's website, along with quotations for and last-sale prices of transactions in the Shares and the intra-day indicative value (''IIV'') and NAV of the Trust will help to reduce the ability of market participants to manipulate the bitcoin market or the price of the Shares and that the Trust's arbitrage mechanism will facilitate the correction of price discrepancies in bitcoin and the Shares. The Sponsor believes that demand from new, larger investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market. The Sponsor expects that the Shares will be purchased primarily by institutional and other substantial investors (such as hedge funds, family offices, private wealth managers and high-net-worth individuals), which will provide additional liquidity and transparency to the bitcoin market in a regulated vehicle such as the Trust.

According to the Sponsor, the MVBTCO's methodology decreases the influence on the MVBTCO of any particular OTC platform that diverges from the rest of the data points used by the MVBTCO, which reduces the possibility of an attempt to manipulate the price of bitcoin as reflected by the MVBTCO.

Bitcoin Security and Storage for the Trust

According to the Sponsor, given the novelty and unique digital characteristics (as set forth above) of bitcoin as an innovative asset class, traditional custodians who normally custody assets do not currently offer custodial services for bitcoin. Accordingly, the Trust will secure bitcoin using multi-signature ''cold storage wallets'', an industry best practice. A cold storage wallet is created and stored on a computer with no access to a network, *i.e.,* an ''air-gapped'' computer with no ability to access the internet. Such a computer is isolated from any network, including local or internet connections. A multi-signature address is an address associated with more than one private key. For example, a ''2 of 3'' address requires two signatures (out of three) from two separate private keys (out of three) to move bitcoin from a sender address to a receiver address.

The Trust will utilize bitcoin private keys that are generated and stored on air-gapped computers. The movement of bitcoin will require physical access to the air-gapped computers and use of multiple authorized signers. For backup and disaster recovery purposes, the Trust will maintain cold storage wallet backups in locations geographically distributed throughout the United States, including in the Northeast and Midwest.

In addition to its security system, the Trust will maintain comprehensive insurance coverage underwritten by various insurance carriers. The purpose of the insurance is to protect investors against loss or theft of the Trust's bitcoin. The insurance will cover loss of bitcoin by, among other things, theft, destruction, bitcoin in transit, computer fraud and other loss of the private keys that are necessary to access the bitcoin held by the Trust. The coverage is subject to certain terms, conditions and

exclusions, as discussed in the Registration Statement. The insurance policy will carry initial limits of $25 million in primary coverage and $100 million in excess coverage, with the ability to increase coverage depending on the value of the bitcoin held by the Trust. To the extent the value of the Trust's bitcoin holdings exceeds the total $125,000,000 of insurance coverage, the Sponsor has made arrangements for additional insurance coverage with the goal of maintaining insurance coverage at a one-to-one ratio with the Trust's bitcoin holdings valued in U.S. dollars such that for every dollar of bitcoin held by the Trust there is an equal amount of insurance coverage.

The Sponsor expects that the Trust's auditor will verify the existence of bitcoin held in custody by the Trust. In addition, the Trust's insurance carriers will have inspection rights associated with the bitcoin held in custody by the Trust.

Bitcoin Market Price

In the ordinary course of business, the Administrator will value the bitcoin held by the Trust based on the closing price set by the MVBTCO or one of the other pricing sources set forth below (each, a ''bitcoin Market Price'') as of 4:00 p.m. E.T., on the valuation date on any day that the Exchange is open for regular trading. For further detail, see (i) below. If for any reason, and as determined by the Sponsor, the Administrator is unable to value the Trust's bitcoin using the procedures described in (i), the Administrator will value the Trust's bitcoin using the cascading set of rules set forth in (ii) through (iv) below. For the avoidance of doubt, the Administrator will employ the below rules sequentially and in the order as presented, should the Sponsor determine that one or more specific rule(s) fails. The Sponsor may determine that a rule has failed if a pricing source is unavailable or, in the judgment of the Sponsor, is deemed unreliable. To the extent the Administrator uses any of the cascading set of rules, the Sponsor will make public on the Trust's website the rule being used.

(i) Except as further described below, the bitcoin Market Price will be: The price set by the MVBTCO as of 4:00 p.m. E.T., on the valuation date. The MVBTCO is a real-time U.S. dollar-denominated composite reference rate for the price of bitcoin. The MVBTCO calculates the intra-day price of bitcoin every 15 seconds, including the closing price as of 4:00 p.m. E.T. The intra-day price and closing price are based on a methodology that consists of collecting actual executable bid/ask spreads and calculating a mid-point price from constituent bitcoin OTC platforms that have entered into an agreement with MVIS. The logic utilized for the derivation of the daily closing index level for the MVBTCO is intended to analyze actual executable bid/ask spread data, verify and refine the data set, and yield an objective, fair-market value of one bitcoin throughout the day and as of 4:00 p.m. E.T. each weekday, priced in U.S. dollars.

(ii) In the event that rule (i) above fails, the bitcoin Market Price will be: the mid-point price between the bid/ask obtained by the Sponsor from any one of the bitcoin OTC platforms included within the MVBTCO index as of 4:00 p.m. E.T., on the valuation date.

(iii) In the event that rules (i) and (ii) above fail, the bitcoin Market Price will be: the volume weighted average bitcoin price for the immediately preceding 24-hour period at 4:00 p.m. E.T. on the valuation date as published by an alternative third party's public data feed that the Sponsor determines is reasonably reliable, subject to the requirement that such data is calculated based upon a volume weighted average bitcoin price obtained from the major U.S. dollar-denominated bitcoin exchanges (''Second Source''). Subject to the next sentence, if the Second Source becomes unavailable (*e.g.,* data sources from the Second Source for bitcoin prices become unavailable, unwieldy or otherwise impractical for use), or if the Sponsor determines in good faith that the Second Source does not reflect an accurate bitcoin price, then the Sponsor will, on a best efforts basis, contact the Second Source in an attempt to obtain the relevant data. If after such contact the Second Source remains unavailable or the Sponsor continues to believe in good faith that the Second Source does not reflect an accurate bitcoin price, then the Administrator will employ the next rule to determine the bitcoin Market Price.

(iv) In the event that rules (i), (ii), and (iii) above fail, the bitcoin Market Price will be: The Sponsor will use its best judgment to determine a good faith estimate of the bitcoin Market Price.

The Trust

According to the Registration Statement, the Trust will invest in bitcoin only. The Trust will either (i) cause the Sponsor to receive bitcoin from the Trust in such quantity as may be necessary to pay the Management Fee or (ii) sell bitcoin in such quantity as may be necessary to permit payment in cash of the Management Fee and other Trust expenses and liabilities not assumed by the Sponsor, such as the bitcoin Insurance Fee, bitcoin storage fees and salaries of Trust principals and employees. As a result, the amount of bitcoin sold will vary from time to time depending on the level of the Trust's expenses and the market price of bitcoin.

The Trust will pay the Sponsor a management fee as compensation for services performed on behalf of the Trust and for services performed in connection with maintaining the Trust. The Sponsor's fee will be payable monthly in arrears and will be accrued daily. The bitcoin Insurance Fee will be payable by the Trust monthly in advance, as described in the Registration Statement. Bitcoin storage fees and salaries of Trust principals and employees will be payable monthly in arrears and will be accrued daily.

In exchange for the Management Fee, the Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: Each of the Trustee's, Administrator's, Cash Custodian's, Transfer Agent's and Marketing Agent's monthly fee and out-of-pocket expenses and expenses reimbursable in connection with such service provider's respective agreement; the marketing support fees and expenses; exchange listing fees; SEC registration fees; index license fees; printing and mailing costs; maintenance expenses for the Trust's website; audit fees and expenses; and up to $100,000 per annum in legal expenses. The Trust will be responsible for paying, or for reimbursing the Sponsor or its affiliates for paying, all the extraordinary fees and expenses, if any, of the Trust. The management fee to be paid to the Sponsor, the bitcoin Insurance Fee, the salaries of the Trust's principals and employees and the expenses associated with custody of the Trust's bitcoin are expected to be the only ordinary recurring operating expense of the Trust.

Net Asset Value

The NAV for the Trust will equal the market value of the Trust's total assets, including bitcoin and cash, less liabilities of the Trust, which include estimated accrued but unpaid fees, expenses and other liabilities. Under the Trust's proposed operational procedures, the Administrator will calculate the NAV on each business day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. E.T. To calculate the NAV, the Administrator will use the closing price set for bitcoin by the MVBTCO or one of the other bitcoin Market Prices set forth above. The Administrator will also

determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on Regular Trading Hours, *i.e.,* 9:30 a.m. to 4:00 p.m. E.T. (which includes the net number of any Shares deemed created or redeemed on such day).

According to the Registration Statement, Authorized Participants (as defined in ''Creation and Redemption of Shares'' below), or their clients or customers, may have an opportunity to realize a riskless profit if they can create a Basket (as defined in ''Creation and Redemption of Shares'' below) at a discount to the public trading price of the Shares or can redeem a Basket at a premium over the public trading price of the Shares. The Sponsor expects that the exploitation of such arbitrage opportunities by Authorized Participants and their clients and customers will tend to cause the public trading price to track NAV per Share closely over time. Such arbitrage opportunities will not be available to holders of Shares who are not Authorized Participants.

While the Trust's investment objective is for the Shares to reflect the performance of the price of bitcoin, less expenses of the Trust's operations, the Shares may trade in the secondary market at prices that are lower or higher relative to their NAV per Share for a number of reasons, including price volatility, trading volume, and closing of bitcoin trading platforms due to fraud, failure, security breaches or otherwise.

The NAV per Share may fluctuate with changes in the market value of the bitcoin held by the Trust. The value of the Shares may be influenced by non-concurrent trading hours between the Exchange and the various bitcoin OTC platforms comprising the MVBTCO. As a result, there will be periods when the Exchange is closed and the bitcoin OTC platforms continue to trade. Significant changes in the price of bitcoin during such time periods could result in a difference between the value of bitcoin as measured by the MVBTCO and the most recent NAV per Share or closing trading price. The Exchange, however, expects that any meaningful divergence in the intraday price of the Shares and the MVTCO will be quickly arbitraged away when trading is available on the Exchange because when such a discount or premium exists, Authorized Participants will generally be able to create or redeem a Basket of Shares at a discount or a premium to the public trading price per Share.

Impact on Arbitrage

Investors and market participants are able throughout the trading day to compare the market price of the Shares and the Share's IIV. If the market price of the Shares diverges significantly from the IIV, Authorized Participants will have strong economic incentive to execute arbitrage trades. Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the underlying bitcoin held by the Trust. If the price of the Shares deviates enough from the price of bitcoin to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the bitcoin that underlies them, an arbitrageur may buy the Shares at a discount, immediately redeem them in exchange for bitcoin, and sell the bitcoin in the cash market at a profit. If the Shares are expensive compared to the bitcoin that underlies them, an arbitrageur may sell the Shares short, buy enough bitcoin to acquire the number of Shares sold short, acquire the Shares through the creation process, and deliver the Shares to close out the short position. To facilitate the arbitrage process, Authorized Participants may source bitcoin through the OTC market or on exchanges; alternatively, Authorized Participants may create or redeem for cash and the Trust will source buyers and sellers of bitcoin in the OTC market. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and bitcoin.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and redeem ''Baskets'', each equal to a block of 5 Shares, only to ''Authorized Participants'' (as described below). The size of a Basket is subject to change. The creation and redemption of a Basket require the delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional bitcoins or the U.S. dollar equivalent represented by each Basket being created or redeemed, the number of which is determined by dividing the number of bitcoins owned by the Trust at such time by the number of Shares outstanding at such time (calculated to one one-hundred-millionth of one bitcoin), as adjusted for the number of whole and fractional bitcoins constituting accrued but unpaid fees and expenses of the Trust and multiplying the quotient obtained by 5 (''bitcoin Basket Amount''). The bitcoin Basket Amount will gradually decrease over time as the Trust's bitcoin are used to pay the Trust's expenses. According to the Registration Statement, as of the date of the Registration Statement, each Share currently represents approximately 25 bitcoin.

Orders to create and redeem Baskets may be placed only by Authorized Participants.[36] A transaction fee will be assessed on all creation and redemption transactions effected in-kind. In addition, the Trust reserves the right to charge a variable transaction fee to the Authorized Participants for creations and redemptions effected in cash to cover the Trust's expenses related to purchasing and selling bitcoin in the OTC market or on bitcoin exchanges if such expenses should exceed the fixed $1,000 transaction fee. The variable transaction fee would cover actual expenses paid for the purchase and sale of bitcoin in order that such expenses do not decrease the NAV of the Trust. Such expenses may vary, but the Trust expects such expenses, should they occur in the future, to constitute 1% or less of the value of a Basket. The creation and redemption of a Basket requires the delivery to the Trust, or the distribution by the Trust, of the bitcoin Basket Amount (that is, the number of bitcoins represented by each Basket or the U.S. dollar equivalent), for each Basket to be created or redeemed. The bitcoin Basket Amount multiplied by the number of Baskets being created or redeemed is the ''Total bitcoin Basket Amount.''

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets. For purposes of processing both purchase and redemption orders, a ''business day'' means any day other than a day when the Exchange is closed for regular trading. Cash purchase orders must be placed by 3:00 p.m. E.T., or the close of regular trading on the Exchange, whichever is earlier, and in-kind purchase orders must be placed by 4:00 p.m. E.T., or the close of regular

[36] An Authorized Participant must: (1) Be a registered broker-dealer and a member in good standing with the Financial Industry Regulatory Authority (''FINRA''); (2) be a participant in Depository Trust Company (''DTC''). To become an Authorized Participant, a person must enter into an ''Authorized Participant Agreement'' with the Sponsor and the Transfer Agent. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the cash (and, potentially, bitcoin in-kind) required for such creations and redemptions.

trading on the Exchange, whichever is earlier. The day on which the Transfer Agent receives a valid purchase order, as approved by the Marketing Agent, is the purchase order date. Purchase orders are irrevocable. By placing a purchase order, and prior to delivery of such Baskets, an Authorized Participant's DTC account will be charged the non-refundable transaction fee due for the purchase order.

Determination of Required Payment

The total payment required to create each Basket is determined by calculating the NAV of 5 Shares of the Trust as of the closing time of the Exchange on the purchase order date. Baskets are issued as of 2:00 p.m., E.T., on the business day immediately following the purchase order date at the applicable NAV as of the closing time of the Exchange on the purchase order date, but only if the required payment has been timely received.

Orders to purchase Baskets for cash must be placed no later than 3:00 p.m. E.T., or the close of regular trading on the Exchange, whichever is earlier, and orders to purchase Baskets in-kind must be placed no later than 4:00 p.m. E.T., or the close of regular trading on the Exchange, whichever is earlier. For cash creation orders, the total cash payment required to create a Basket will not be determined until approximately 4:00 p.m., E.T. (the time at which the Trust's NAV for that day is expected to be calculated) on the date the purchase order is received by the Transfer Agent and approved by the Marketing Agent. Authorized Participants therefore will not know the total amount of the payment required to create a Basket at the time they submit an irrevocable purchase order for the Basket. Valid cash orders to purchase Baskets received after 3:00 p.m. E.T., and valid in-kind orders to purchase Baskets received after 4:00 p.m. E.T., are considered received on the following business day. The NAV of the Trust, and thus the total amount of the payment required to create a Basket for cash could rise or fall substantially between the time an irrevocable purchase order is submitted and the time the amount of the purchase price in respect thereof is determined. Changes to the price of bitcoin between the time an order is placed and the time the final price is determined by the Trust will be borne by the Authorized Participant and not by the Trust.

The Sponsor makes available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange (a) the amount of cash required for a cash creation of a Basket (the ''Cash Basket Amount''), based on 100% of the NAV of the Shares per Basket as of the prior business day, which amount is applicable in order to effect cash purchases of Baskets until such time as the next announced amount is made available and (b) the bitcoin Basket Amount.

The payment required to create a Basket typically will be made in cash, but it may also be made partially or wholly in-kind at the discretion of the Sponsor if the Authorized Participant requests to convey bitcoin directly to the Trust. For a cash order to create, the Authorized Participant must deliver the Cash Basket Amount to the Cash Custodian on the day the order is placed and accepted and, potentially, an amount of cash on the business day after the order is placed and approved referred to as the ''Balancing Amount,'' computed as described below. Upon delivery of the Cash Basket Amount and the Balancing Amount to the Cash Custodian, the Transfer Agent will cause the Trust to issue a Basket to the Authorized Participant. Expenses incurred by the Trust relating to purchasing bitcoin in assembling a cash creation Basket, such as OTC market fees, bitcoin exchange-related fees and/or transaction fees, will be borne by Authorized Participants, rather than the Trust, through the transaction fee charged by the Trust.

The Balancing Amount is an amount equal to the difference between the NAV of the Shares (per Basket) at the end of the business day the order is placed and approved and the Cash Basket Amount. The Balancing Amount serves to compensate for any difference between the NAV per Basket and the Cash Basket Amount. The Balancing Amount may be positive (in which case the Authorized Participant will be required to transfer the corresponding amount of cash to the Cash Custodian) or negative (in which case the amount of cash required to be transferred by the Authorized Participant will be less than the Cash Basket Amount, and if the Authorized Participant has already delivered the full Cash Basket Amount, the corresponding amount of cash will be returned to the Authorized Participant). Authorized Participants will be notified of the Balancing Amount that must be paid to the Cash Custodian or refunded by the Cash Custodian, if any, by approximately 4:00 p.m., E.T. on the business day the order is placed and approved. The Balancing Amount must be paid to the Cash Custodian no later than 2:00 p.m. E.T. on the business day following the date the order was placed and approved. Upon delivery of the Cash Basket Amount and Balancing Amount to the Cash Custodian, the Transfer Agent will cause the Trust to issue a Basket to the Authorized Participant the following business day by 2:00 p.m., E.T.

To the extent the Authorized Participant places an in-kind order to create, the Authorized Participant must deliver the Bitcoin Basket Amount directly to the Trust (*i.e.* to the security system that holds the Trust's bitcoin) no later than 4:00 p.m. E.T. on the date the purchase order is received and approved. Upon delivery of the bitcoin to the Trust's security system, the Transfer Agent will cause the Trust to issue a Basket to the Authorized Participant the following business day by 2:00 p.m., E.T. Payment of any tax or other fees and expenses payable upon transfer of bitcoin shall be the sole responsibility of the Authorized Participant purchasing a Basket. Expenses incurred by Authorized Participants relating to purchasing bitcoin in assembling an in-kind creation Basket, such as OTC market fees, bitcoin exchange-related fees and/or transaction fees, will be borne by Authorized Participants.

The Administrator, by email or telephone correspondence, shall notify the Authorized Participant of the NAV of the Trust and the corresponding amount of cash (in the case of a cash purchase order) to be included in a Balancing Amount by approximately 4:00 p.m. E.T. on the day the purchase order is placed and approved.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Transfer Agent to redeem one or more Baskets. Cash redemption orders must be placed no later than 3:00 p.m. E.T., or the close of regular trading on the New York Stock Exchange, whichever is earlier, and redemption orders submitted in-kind must be placed by 4:00 p.m. E.T., or the close of regular trading on the Exchange, whichever is earlier. The day on which the Transfer Agent receives a valid redemption order, as approved by the Marketing Agent, is the ''redemption order date.'' Redemption orders are irrevocable. The redemption procedures allow only Authorized Participants to redeem Baskets. A shareholder may not redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through

DTC's book-entry system to the Trust not later than 4:00 p.m. E.T. on the business day immediately following the redemption order date. By placing a redemption order, and prior to receipt of the redemption proceeds, an Authorized Participant's DTC account will be charged the non-refundable transaction fee due for the redemption order.

Determination of Redemption Proceeds

The redemption proceeds from the Trust consist of the ''cash redemption amount'' or, if making an in-kind redemption, bitcoin. The cash redemption amount is equal to the U.S. dollar equivalent of the Total bitcoin Basket Amount requested in the Authorized Participant's redemption order as of the end of Regular Trading Hours on the redemption order date. The Cash Custodian will distribute the cash redemption amount at 4:00 p.m., E.T., on the business day immediately following the redemption order date through DTC to the account of the Authorized Participant as recorded on DTC's book-entry system. The bitcoin redemption amount will be the Total bitcoin Basket Amount. At the discretion of the Sponsor and if the Authorized Participant requests to receive bitcoin directly, some or all of the redemption proceeds may be distributed to the Authorized Participant in-kind by the Trust.

Orders to redeem Baskets must be placed no later than 3:00 p.m. E.T. for cash redemption orders and 4:00 p.m. E.T. for in-kind redemptions orders, but the total amount of redemption proceeds typically will not be determined until after 4:00 p.m. E.T. on the date the redemption order is received. Authorized Participants therefore will not know the total amount of the redemption proceeds at the time they submit an irrevocable redemption order.

Delivery of Redemption Proceeds

The redemption proceeds due from the Trust are delivered to the Authorized Participant at 4:00 p.m. E.T. on the business day immediately following the redemption order date if, by such time on such business day immediately following the redemption order date, the Trust's DTC account has been credited with the Baskets to be redeemed. If the Trust's DTC account has not been credited with all of the Baskets to be redeemed by such time, the redemption distribution is delivered to the extent of whole Baskets received. The Sponsor may, but is not obligated to, extend the redemption date with respect to a redemption order for which whole Baskets have not been delivered by the Authorized Participant. In such event, the Sponsor may charge the Authorized Participant a fee for such extension to reimburse the Trust for any losses incurred from the Authorized Participant's failure to deliver whole Baskets (including, but not limited to, expenses incurred in selling bitcoin in respect of the redemption order and/or buying bitcoin back following the failure of the Authorized Participant to deliver whole Baskets, as well as losses to the Trust from movements in the market value of bitcoin between selling the bitcoin and buying it back). If the Sponsor extends the redemption date, any remainder of the redemption distribution is delivered on the next business day to the extent of remaining whole Baskets received if the Sponsor receives the fee applicable to the extension of the redemption distribution date and the remaining Baskets to be redeemed are credited to the Trust's DTC account by 4:00 p.m. E.T. on such next business day. Any further outstanding amount of the redemption order shall be cancelled.

The Sponsor makes available through the NSCC, prior to the opening of business on the Exchange on each business day, (a) for in-kind redemptions, the amount of bitcoin per Basket and (b) for cash redemptions, the amount of cash per Basket that will be applicable to redemption requests received in proper form.

As with creation orders, the NAV of the Shares per Basket as of the day on which a redemption request is received and approved will be calculated after the deadline for redemption orders. The amount of cash payable per Basket for a cash redemption order accordingly will be calculated after the redemption order is received. The Administrator, by email or telephone correspondence, shall notify the Authorized Participant of the NAV of the Trust and the corresponding amount of cash (in the case of a cash redemption order) to be payable per Basket by approximately 4:00 p.m. E.T. on the day the purchase order is placed and approved.

To the extent the Authorized Participant places an in-kind order to redeem a Basket, the Trust will deliver, on the business day immediately following the day the redemption order is received, the Total bitcoin Basket Amount. Expenses relating to transferring bitcoin to an Authorized Participant in a redemption Basket will be borne by Authorized Participants via the redemption transaction fee.

Availability of Information

The Trust's website will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price [37] in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price'') and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the MVBTCO, including key elements of how the MVBTCO is calculated, will be publicly available at *www.mvis-indices.com/.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. To the extent that the Administrator has utilized the cascading set of rules described in ''bitcoin Market Price'' above, the Trust's website will note the valuation methodology used and the price per bitcoin resulting from such calculation. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of

[37] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the MVBTCO. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

The Trust will provide website disclosure of its bitcoin holdings daily. The website disclosure of the Trust's bitcoin holdings will occur at the same time as the disclosure by the Sponsor of the bitcoin holdings to Authorized Participants so that all market participants are provided such portfolio information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current bitcoin holdings of the Trust through the Trust's website.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) Issued by a trust that holds a specified commodity [38] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity. The Exchange notes that in addition to the in-kind creation and redemption processes described in Rule 14.11(e)(4)(C)(i), the Trust will also offer creations and redemptions of Shares for cash in addition to creating and redeeming in-kind. The Trust represents that the ability to create and redeem for cash will allow APs that may otherwise be unwilling or unable to source bitcoin on their own behalf to participate in the creation and redemption of Shares.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Trust currently expects that there will be at least 100 Shares outstanding at the time of commencement of trading on the Exchange, which the Exchange believes to be sufficient to provide adequate market liquidity. Assuming a bitcoin price of $4,000 and approximately 25 bitcoin per Share, the Shares would be approximately $100,000 each. With a minimum of 100 Shares outstanding, the market value of all Shares outstanding would be approximately $10,000,000. Rules 14.11(e)(4)(C)(ii)(b) [sic] and (c) provide that the Exchange will commence delisting proceedings for a series of Commodity-Based Trust Shares where the applicable trust has fewer than 50,000 receipts or the market value of all receipts issued and outstanding is less than $1,000,000, respectively, following the initial 12 month period following commencement of trading on the Exchange. These rules are designed to ensure that there are sufficient shares and market value outstanding to facilitate the creation and redemption process and ensure that the arbitrage mechanism will keep the price of a series of Commodity-Based Trust Shares in line with its NAV and prevent manipulation in the shares. The Exchange is proposing that Rule 14.11(e)(4)(C)(ii)(b) [sic] would not apply to the Shares because the Exchange believes that such policy concerns are otherwise mitigated. The lower number of Shares is merely a function of price that will have no impact on the creation and redemption process and the arbitrage mechanism. Whether the Shares are priced equal to

[38] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. The CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated:

''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g.,* Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

25 bitcoin with a Basket of 5 Shares or the Shares are priced equal to .025 bitcoin with a Basket of 5,000 Shares, the cost to an AP to create or redeem will be the exact same and such a creation and redemption will have the same proportional impact on Shares and market value outstanding. Because the creation units and redemption units for most exchange-traded products are between 5,000 and 50,000 shares, it makes sense to apply a minimum number of shares outstanding to such products. Where a creation unit is 5 shares, the policy concerns that Rule 14.11(e)(4)(C)(ii)(b) [sic] is designed to address are mitigated even where there are significantly fewer shares outstanding. As such, the Exchange is proposing that it would not commence delisting proceedings for the Shares if the Shares do not satisfy Rule 14.11(e)(4)(C)(ii)(b) [sic].

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the Intermarket Surveillance Group (''ISG''), from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[39] In addition, the Exchange may obtain information about bitcoin transactions, trades and market data from each of the OTC platforms that are included in the MVBTCO, from bitcoin exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement, as well as certain additional information that is publicly available through the Bitcoin blockchain. The Exchange notes that it has entered into a comprehensive surveillance sharing agreement with Gemini Exchange and is working to establish similar agreements with other bitcoin exchanges and the OTC Trading Desks.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) The procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares during the Pre-Opening[40] and After Hours Trading Sessions[41] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additional Background on the Bitcoin Industry

The Bitcoin Network

A bitcoin is an asset that can be transferred among parties via the internet, but without the use of a central administrator or clearing agency. The term ''decentralized'' is often used in descriptions of bitcoin, in reference to bitcoin's lack of necessity for administration by a central party. The Bitcoin Network (*i.e.,* the network of computers running the software protocol underlying bitcoin involved in maintaining the database of bitcoin ownership and facilitating the transfer of bitcoin among parties) and the asset, bitcoin, are intrinsically linked and inseparable. Bitcoin was first described in a white paper released in 2008 and published under the name ''Satoshi Nakamoto'', and the protocol underlying bitcoin was subsequently released in 2009 as open source software.

Bitcoin Ownership and the Blockchain

To begin using bitcoin, a user may download specialized software referred to as a ''bitcoin wallet''. A user's bitcoin wallet can run on a computer or smartphone. A bitcoin wallet can be used both to send and to receive bitcoin. Within a bitcoin wallet, a user will be able to generate one or more ''bitcoin addresses'', which are similar in concept to bank account numbers, and each address is unique. Upon generating a bitcoin address, a user can begin to transact in bitcoin by receiving bitcoin at his or her bitcoin address and sending it from his or her address to another

[39] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[40] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[41] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

user's address. Sending bitcoin from one bitcoin address to another is similar in concept to sending a bank wire from one person's bank account to another person's bank account.

Balances of the quantity of bitcoin associated with each bitcoin address are listed in a database, referred to as the ''blockchain''. Copies of the blockchain exist on thousands of computers on the Bitcoin Network throughout the internet. A user's bitcoin wallet will either contain a copy of the blockchain or be able to connect with another computer that holds a copy of the blockchain.

When a bitcoin user wishes to transfer bitcoin to another user, the sender must first request a bitcoin address from the recipient. The sender then uses his or her bitcoin wallet software, to create a proposed addition to the blockchain. The proposal would decrement the sender's address and increment the recipient's address by the amount of bitcoin desired to be transferred. The proposal is entirely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin Network. Such digital proposals are referred to as ''bitcoin transactions''. Bitcoin transactions and the process of one user sending bitcoin to another should not be confused with buying and selling bitcoin, which is a separate process (as discussed below in ''bitcoin Trading On Exchanges'' and ''bitcoin Trading Over-the-Counter'').

A bitcoin transaction is similar in concept to an irreversible digital check. The transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a confirmation fee and the sender's digital signature. The sender's use of his or her digital signature enables participants on the Bitcoin Network to verify the authenticity of the bitcoin transaction.

A user's digital signature is generated via usage of the user's so-called ''private key'', one of two numbers in a so-called cryptographic ''key pair''. A key pair consists of a ''public key'' and its corresponding private key, both of which are lengthy numerical codes, derived together and possessing a unique relationship.

Public keys are used to create bitcoin addresses. Private keys are used to sign transactions that initiate the transfer of bitcoin from a sender's bitcoin address to a recipient's bitcoin address. Only the holder of the private key associated with a particular bitcoin address can digitally sign a transaction proposing a transfer of bitcoin from that particular bitcoin address.

A user's bitcoin address (which is derived from a public key) may be safely distributed, but a user's private key must remain known solely by its rightful owner. The utilization of a private key is the only mechanism by which a bitcoin user can create a digital signature to transfer bitcoin from him or herself to another user. Additionally, if a malicious third party learns of a user's private key, that third party could forge the user's digital signature and send the user's bitcoin to any arbitrary bitcoin address (*i.e.,* the third party could steal the user's bitcoin).

When a bitcoin holder sends bitcoin to a destination bitcoin address, the transaction is initially considered unconfirmed. Confirmation of the validity of the transaction involves verifying the signature of the sender, as created by the sender's private key. Confirmation also involves verifying that the sender has not ''double spent'' the bitcoin (*e.g.,* confirming Party A has not attempted to send the same bitcoin both to Party B and to Party C). The confirmation process occurs via a process known as ''bitcoin mining''.

Bitcoin mining utilizes a combination of computer hardware and software to accomplish a dual purpose: (i) To verify the authenticity and validity of bitcoin transactions (*i.e.,* the movement of bitcoin between addresses) and (ii) the creation of new bitcoin. Neither the Sponsor nor the Trust intends to engage in bitcoin mining.

Bitcoin miners do not need permission to participate in verifying transactions. Rather, miners compete to solve a prescribed and complicated mathematical calculation using computers dedicated to the task. Rounds of the competition repeat approximately every ten minutes. In any particular round of the competition, the first miner to find the solution to the mathematical calculation is the miner who gains the privilege of announcing the next block to be added to the blockchain.

A new block that is added to the blockchain serves to take all of the recent-yet-unconfirmed transactions and verify that none are fraudulent. The recent-yet-unconfirmed transactions also generally contain transaction fees that are awarded to the miner who produces the block in which the transactions are inserted, and thereby confirmed. The successful miner also earns the so-called ''block reward'', an amount of newly created bitcoin. Thus, bitcoin miners are financially incentivized to conduct their work. The financial incentives received by bitcoin miners are a vital part of the process by which the Bitcoin Network functions.

Upon successfully winning a round of the competition (winning a round is referred to as mining a new block), the miner then transmits a copy of the newly-formed block to peers on the Bitcoin Network, all of which then update their respective copies of the blockchain by appending the new block, thereby acknowledging the confirmation of the transactions that had previously existed in an unconfirmed state.

A recipient of bitcoin must wait until a new block is formed in order to see the transaction convert from an unconfirmed state to a confirmed state. According to the Registration Statement, with new rounds won approximately every ten minutes, the average wait time for a confirmation is five minutes.

The protocol underlying bitcoin provides the rules by which all users and miners on the Bitcoin Network must operate. A user or miner attempting to operate under a different set of rules will be ignored by other network participants, thus rendering that user's or miner's behavior moot. The protocol also lays out the block reward, the amount of bitcoin that a miner earns upon creating a new block. The initial block reward when Bitcoin was introduced in 2009 was 50 bitcoin per block. That number has and will continue to halve approximately every four years until approximately 2140, when it is estimated that block rewards will go to zero. The most recent halving occurred on July 9, 2016, which reduced the block reward from 25 to 12.5 bitcoin. The next halving is projected for May 2020, which will reduce the block reward to 6.25 bitcoin from its current level of 12.5. The halving thereafter will occur in another four years and will reduce the block reward to 3.125 bitcoin, and so on. As of May 2018, there are approximately 17 million bitcoin that have been created, a number that will grow with certainty to a maximum of 21 million, estimated to occur by the year 2140. Bitcoin mining should not be confused with buying and selling bitcoin, which, as discussed below, is a separate process.

Use of Bitcoin and the Blockchain

Beyond using bitcoin as a value transfer mechanism, applications related to the blockchain technology underlying bitcoin have become increasingly prominent.[42] Blockchain-focused applications take advantage of certain unique characteristics of the

[42] Additional applications based on blockchain technology—both the blockchain underlying bitcoin as well as separate public blockchains incorporating similar characteristics of the blockchain underlying bitcoin—are currently in development by numerous entities, including financial institutions like banks.

blockchain such as secure time stamping (secure time stamps are on newly created blocks), highly redundant storage (copies of the blockchain are distributed throughout the internet) and tamper-resistant data secured by secure digital signatures.

According to the Registration Statement, blockchain-focused applications in usage and under development include, but are not limited to asset title transfer, secure timestamping, counterfeit and fraud detection systems, secure document and contract signing, distributed cloud storage and identity management. Although value transfer is not the primary purpose for blockchain-focused applications, the usage of bitcoin, the asset, is inherently involved in blockchain-focused applications, thus linking the growth and adoption of bitcoin to the growth and adoption of blockchain-focused applications.

Bitcoin Exchanges

Bitcoin exchanges operate websites that facilitate the purchase and sale of bitcoin for various government-issued currencies, including the U.S. dollar, the euro or the Chinese yuan. Activity on bitcoin exchanges should not be confused with the process of users sending bitcoin from one bitcoin address to another bitcoin address, the latter being an activity that is wholly within the confines of the Bitcoin Network and the former being an activity that occurs entirely on private websites.

Bitcoin exchanges operate in a manner that is unlike the traditional capital markets infrastructure in the U.S. and in other developed nations. Bitcoin exchanges combine the process of order matching, trade clearing, trade settlement and custody into a single entity. For example, a user can send U.S. dollars via wire to a bitcoin exchange and then visit the exchange's website to purchase bitcoin. The entirety of the transaction—from trade to clearing to settlement to custody (at least temporary custody)—is accomplished by the bitcoin exchange in a matter of seconds. The user can then withdraw the purchased bitcoin into a wallet to take custody of the bitcoin directly.

According to the Registration Statement, there are currently several U.S.-based regulated entities that facilitate bitcoin trading and that comply with state and/or U.S. AML and KYC regulatory requirements. While the CFTC is responsible for regulating the bitcoin spot market with respect to fraud and manipulation—in the same way that it regulates the spot market for gold, silver or other exempt commodities—there is no direct, comprehensive federal oversight of bitcoin exchanges or trading platforms in the United States and no U.S. exchanges are registered with the Commission or the CFTC.

- Coinbase, which is based in California, is a bitcoin exchange that maintains money transmitter licenses in over thirty states, the District of Columbia and Puerto Rico. Coinbase is subject to the regulations enforced by the various State agencies that issued their respective money transmitter licenses to Coinbase. The New York Department of Financial Services (''NYDFS'') granted a BitLicense to Coinbase in January 2017.
- itBit is a bitcoin exchange that was granted a limited purpose trust company charter by the NYDFS in May 2015. Limited purpose trusts, according to the NYDFS, are permitted to undertake certain activities, such as transfer agency, securities clearance, investment management, and custodial services, but without the power to take deposits or make loans.
- Gemini is a bitcoin exchange that is also regulated by the NYDFS. In October 2015, NYDFS granted Gemini an Authorization Certificate, which allows Gemini to operate as a limited purpose trust company.
- Genesis Global Trading is a FINRA member firm that makes a market in bitcoin by offering two-sided liquidity (''Genesis Global Trading''). In May 2018, NYDFS granted Genesis Global Trading a BitLicense.
- bitFlyer is a virtual currency exchange that is registered in Japan. In November 2017, NYDFS granted Tokyo-based bitFlyer a BitLicense.

Bitcoin are traded with publicly disclosed valuations for each transaction, measured by one or more government currencies such as the U.S. dollar, the euro or the Chinese yuan. Bitcoin exchanges typically report publicly on their site the valuation of each transaction and bid and ask prices for the purchase or sale of bitcoin. Although each bitcoin exchange has its own market price, it is expected that most bitcoin exchanges' market prices should be relatively consistent with the bitcoin exchange market average since market participants can choose the bitcoin exchange on which to buy or sell bitcoin (*i.e.,* exchange shopping).

Additional Bitcoin Trading Products

In addition to the Bitcoin Futures market described above, certain U.S. platforms and non-U.S. based bitcoin exchanges offer derivative products on bitcoin such as options, swaps, and futures. According to the Registration Statement, BitMex, based in the Republic of Seychelles, CryptoFacilites, based in the United Kingdom, 796 Exchange, based in China, and OKCoin Exchange China all offer futures contracts settled in bitcoin. Coinut, based in Singapore, offers bitcoin binary options and vanilla options based on the Coinut index. Deribit, based in the Netherlands, offers vanilla options and futures contracts settled in bitcoin. IGMarkets, based in the United Kingdom, Avatrade, based in Ireland, and Plus500, based in Israel, all offer bitcoin derivative products.

The CFTC has stated that bitcoin and other virtual currencies are encompassed in the definition of commodities under the CEA.[43] In July 2017, the CFTC issued an order granting LedgerX, LLC (''LedgerX'') registration as a derivatives clearing organization under the CEA. Under the order, LedgerX is authorized to provide clearing services for fully-collateralized digital currency swaps. LedgerX, which was also granted an order of registration as a Swap Execution Facility in July 2017, is the first federally-regulated exchange and clearing house for derivatives contracts settling in digital currencies. LedgerX began trading options and swaps on its platform in October 2017. While the CFTC does not regulate the bitcoin spot market—in the same way that it does not regulate the spot market for gold, silver or other exempt commodities—it is nevertheless responsible for overseeing and enforcing the CEA as it applies to trading in bitcoin derivatives.

In May 2015, the Swedish FSA approved the prospectus for ''Bitcoin Tracker One'', an open-ended exchange-traded note that tracks the price of bitcoin in U.S. dollars. The Bitcoin Tracker One initially traded in Swedish krona on the Nasdaq Nordic in Stockholm, but is now also available to trade in euro. The Bitcoin Tracker One is available to retail investors in the European Union and to those investors in the U.S. who maintain brokerage accounts with Interactive Brokers.

Founded in 2013, Bitcoin Investment Trust, a private, open-ended trust available to accredited investors, is another investment vehicle that derives its value from the price of bitcoin. Eligible shares of the Bitcoin Investment Trust are quoted on the OTCQX marketplace under the symbol ''GBTC''.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)

[43] *See* Coinflip.

of the Act[44] in general and Section 6(b)(5) of the Act[45] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information about bitcoin transactions, trades and market data from each of the OTC platforms that are included in the MVBTCO, from bitcoin exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as certain additional information that is publicly available through the Bitcoin blockchain. The Exchange notes that it has entered into a comprehensive surveillance sharing agreement with Gemini Exchange and is working to establish similar agreements with other bitcoin exchanges and the OTC Trading Desks.

The proposal is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Commodity-Based Trust Shares based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and to the marketplace, and will allow institution and other substantial investors access to bitcoin exposure without requiring direct access to the bitcoin market and the associated complications. Despite the growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through direct investment through bitcoin exchanges, over-the-counter trading, or bitcoin derivatives contracts. For investors simply wishing to express an investment viewpoint in bitcoin, investment through derivatives is complex and requires active management and direct investment in bitcoin brings with it significant inconvenience, complexity, expense, and risk. The Shares would therefore represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain exposure to bitcoin in a secure and easily accessible product that is familiar and transparent to investors. Such an innovation would help to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by improving investor access to bitcoin exposure through efficient and transparent exchange-traded derivative products.

As noted above, the Sponsor expects that the Shares will be purchased primarily by institutional and other substantial investors (such as hedge funds, family offices, private wealth managers and high-net-worth individuals), which will provide additional liquidity and transparency to the bitcoin market in a regulated vehicle such as the Trust. With an estimated initial per-share price equivalent to 25 bitcoin, the Shares will be cost-prohibitive for smaller retail investors while allowing larger and generally more sophisticated institutional investors to gain exposure to the price of bitcoin through a regulated product while eliminating the complications and reducing the risk associated with buying and holding bitcoin.

The Exchange also believes that allowing cash creations and redemptions, in addition to the in-kind creations described in Rule 14.11(e)(4)(C)(i), will allow APs that may otherwise be unwilling or unable to source bitcoin on their own behalf to participate in the creation and redemption of Shares, further acting to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange also believes that not commencing delisting proceedings for the Shares if the Shares do not satisfy Rule 14.11(e)(4)(C)(ii)(b) [sic] is consistent with the Act because where a creation unit is 5 shares because the policy concerns that Rule 14.11(e)(4)(C)(ii)(b) [sic] is designed to address related to minimum receipts outstanding following the 12 month period following commencement of trading on the Exchange are mitigated even where there are significantly fewer shares outstanding. The Exchange believes that the lower number of Shares is merely a function of price and that, in this instance, will have no impact on the creation and redemption process and the arbitrage mechanism.

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters, as well as the MVBTCO. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year. The Trust will provide website disclosure of its bitcoin holdings daily. The website disclosure of the Trust's bitcoin holdings will occur at the same time as the disclosure by the Sponsor of the bitcoin holdings to Authorized Participants so that all market participants are provided such portfolio information at the same time. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the Bid-Ask

[44] 15 U.S.C. 78f.

[45] 15 U.S.C. 78f(b)(5).

Price and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the MVBTCO, including key elements of how the MVBTCO is calculated, will be publicly available at *www.mvis-indices.com/.* The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

As discussed extensively above, Cboe believes that, based on previous application of the standard, the market for Bitcoin Futures is a regulated market of significant size with which the Exchange has in place comprehensive surveillance sharing agreements and, thus, the Commission should approve this proposal.[46] In addition, the Exchange also believes that there are sufficient other means to prevent fraudulent and manipulative acts and practices in the Shares, as was presented as an alternate means to demonstrate that a proposal is consistent with Section 6(b)(5) of the Act in the in the GraniteShares Disapproval Order. Specifically, the Exchange believes that the collective effect of the following factors are sufficient to prevent fraudulent and manipulative acts and practices in the Shares:[47] (i) The regulated nature of each of the firms that make up the MVBTCO; (ii) the notional volume of trading[48] and liquidity[49] available on the OTC Trading Desks; (iii) the principal to principal nature of the OTC Trading Desks; and (iv) in addition to its standard surveillance procedures, the Exchange will have in place a comprehensive surveillance sharing agreement with each of these firms prior to the Shares listing on the Exchange.[50]

Cboe believes that, if reviewed through the same lens as similar precedent, this proposal is consistent with the Act and should be approved. The Commission's approval of this or any proposal to list and trade an ETP is not an endorsement of the underlying asset and especially is not a guarantee against the ETP being an extremely risky and/or volatile investment. Rather, it signifies that the benefits to end investors that want exposure to a particular asset class from having a regulated and transparent U.S. exchange traded vehicle outweigh the applicable risk of manipulation. With this in mind, Cboe believes that the Bitcoin Futures market is a significant, regulated market, especially when compared to the dry bulk shipping futures market described in the Approval Order, and therefore the Commission should approve this proposal. Further, even if the Commission were to determine that the Bitcoin Futures market is not a significant, regulated market, the Exchange believes that the regulated nature of each of the firms that make up the MVBTCO, the nature of trading and liquidity available on each of its constituents, and the comprehensive surveillance sharing agreements that the Exchange will have in place with each of the OTC Trading Desks constitute sufficient record evidence to demonstrate that there are other means to prevent fraudulent and manipulative acts and practices in the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

[46] As described above, the Exchange continues to believe that bitcoin itself is particularly resistant to price manipulation. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply, making it particularly difficult to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[47] While not directly related to the issue of manipulation, the Exchange also notes that the Sponsor expects that the Shares will be purchased primarily by institutional and other substantial investors (such as hedge funds, family offices, private wealth managers and high-net-worth individuals), which will provide additional liquidity and transparency to the bitcoin market in a regulated vehicle such as the Trust. With an estimated initial per-share price equivalent to 25 bitcoin, the Shares will be cost-prohibitive for smaller retail investors while allowing larger and generally more sophisticated institutional investors to gain exposure to the price of bitcoin through a regulated product while eliminating the complications and reducing the risk associated with buying and holding bitcoin.

[48] The Sponsor has indicated that there are tens of millions to hundreds of millions of dollars of bitcoin traded on the OTC Trading Desks on a daily basis.

[49] Each constituent firm offers and will continue to offer firm, executable quotes of at least $250,000 depth on both the bid and ask at all times.

[50] The Trust maintains crime, excess crime and excess vault risk insurance coverage underwritten by various insurance carriers that will cover the entirety of the Trust's bitcoin holdings. While the Trust remains fully confident in its system for securing its bitcoin, insurance coverage of all of the Trust's bitcoin holdings eliminates exposure to the risk of loss to investors through fraud or theft, which in turn eliminates most of the custodial issues associated with a series of Commodity-Based Trust Shares based on bitcoin.

to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–004, and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02732 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85121; File No. SR–OCC–2015–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Disapproving Proposed Rule Change Concerning The Options Clearing Corporation's Capital Plan

February 13, 2019.

I. Introduction

The Options Clearing Corporation (''OCC'') submitted a proposed rule change in January 2015 that implements a plan to significantly increase OCC's capitalization (''Capital Plan'' or ''Plan''). After being approved by the Securities and Exchange Commission (''Commission'' or ''SEC''),[1] the Capital Plan is now before the Commission on remand from the Court of Appeals for the District of Columbia Circuit (''Court'' or ''D.C. Circuit'').[2] As discussed in more detail below, upon further review, the Commission is disapproving the proposed rule change because the information before us is insufficient to support a finding that the Plan is consistent with the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') and the rules and regulations thereunder.

In particular, we conclude that the Commission does not have sufficient information to determine that the Capital Plan was adopted in a manner consistent with OCC's own rules, as required by Exchange Act Section 19(g). OCC's By-laws require that exchanges which are not shareholders of OCC be promptly provided with notice of certain matters that the Executive Chairman of OCC considers to be of competitive significance to those exchanges. No such notice was given during consideration of the Capital Plan. Based on the information before us, we cannot determine whether or how the Executive Chairman concluded that the Capital Plan lacked competitive significance such that notification was not required.

In addition, we conclude that we lack sufficient information to determine whether the Capital Plan imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, as prohibited by Section 17A(b)(3)(I) of that Act. Specifically, we cannot determine whether the Capital Plan, as implemented, has burdened competition. Nor do we have sufficient information to determine whether the dividend policy incorporated in the Capital Plan advantages the recipients of the dividends in a manner inconsistent with the Exchange Act.

We recognize that the Commission previously approved this proposed rule change. But we did so, in significant part, in reliance upon OCC's representations regarding the process through which the Plan was negotiated and developed by OCC and its Board.[3] The D.C. Circuit's *Susquehanna* Opinion makes clear that relying on such representations, without more, is insufficient. Rather, the Commission must critically evaluate the representations made and the conclusions drawn by OCC.[4] After conducting such an analysis on remand, and after giving the parties the opportunity to submit additional materials to the Commission, we have determined that OCC has failed to meet its burden to demonstrate that the Capital Plan is consistent with the Exchange Act in at least two respects, as noted above and explained below.

II. Background

OCC is registered with the Commission as a clearing agency and, as such, is a self-regulatory organization (''SRO'') under the Exchange Act.[5] OCC is the only clearing agency for standardized U.S. securities options listed on SEC-registered national securities exchanges (''listed options'').

[1] Release No. 34–77112, File No. SR–OCC–2015–02 (Feb. 11, 2016), 81 FR 8294 (Feb. 18, 2016) (''Approval Order'').

[2] *See Susquehanna Int'l Grp., LLP* v. *SEC,* 866 F.3d 442, 443 (D.C. Cir. 2017) (''*Susquehanna* Opinion''). OCC implemented the Capital Plan in 2015. Neither the Commission nor the Court stayed the implementation of the plan on review, and the D.C. Circuit did not vacate the Commission's approval order on remand. The Capital Plan therefore has remained in effect.

[3] *See, e.g.,* Approval Order at 8301, 8302, and 8305.

[4] *Susquehanna,* 866 F.3d at 447 (''the [Commission] should have critically reviewed OCC's analysis or performed its own.''); *id.* at 448 (''the [Commission] cannot rely on OCC's process totally divorced from any examination of the Plan.'').

[5] *See* 15 U.S.C. 78c(a)(26). OCC is also registered with the U.S. Commodity Futures Trading Commission as a derivatives clearing organization.

Of the national securities exchanges on which listed options are traded, five are equal owners of OCC (''Stockholder Exchanges'').[6] These Stockholder Exchanges are also affiliated, through various ownership structures, with several other national securities exchanges on which listed options are traded.[7] There are three national securities exchanges on which listed options are traded that have no ownership stake in OCC (''Non-Stockholder Exchanges'').[8]

OCC clears and settles listed options trades executed on the Stockholder and Non-Stockholder Exchanges. OCC also has clearing members that clear and settle options trades for their customers through the exchanges, and that pay fees and receive refunds from OCC. In addition, OCC serves other financial markets, including the commodity futures, commodity options, security futures, securities lending, and the over-the-counter options markets. OCC provides central counterparty (''CCP'') clearing services for all of these markets and performs critical functions in the clearance and settlement process. OCC's role as the sole CCP for all listed options contracts in the U.S. makes it an integral part of the national system for clearance and settlement. The Financial Stability Oversight Council designated OCC as a systemically important financial market utility (''SIFMU'') in 2012.[9]

III. Procedural History

On January 14, 2015, OCC filed the proposed rule change implementing the Capital Plan with the Commission pursuant to Section 19(b)(1) of the Exchange Act[10] and Rule 19b–4 thereunder.[11] On January 30, 2015, the Commission published the proposed rule change for comment in the **Federal Register**.[12] On March 6, 2015, the Division of Trading and Markets, for the Commission pursuant to delegated authority,[13] issued an order approving the proposal (''Delegated Order'').[14] The Delegated Order assessed whether the proposal was consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder, specifically finding that the Capital Plan was consistent with Exchange Act Sections 17A(b)(3)(A), 17A(b)(3)(F), 17A(b)(3)(D) and 17A(b)(3)(I) and should therefore be approved.[15]

In March 2015, BATS Global Markets, Inc. (''BATS''), BOX, KCG Holdings, Inc. (''KCG''), MIAX, and Susquehanna International Group, LLP (''SIG'') (collectively ''Petitioners'') petitioned for review of the Delegated Order by the Commission.[16] On February 11, 2016, after a *de novo* review of the Capital Plan and comments received, the Commission issued an order setting aside the Delegated Order and approving the Capital Plan (''Approval Order'').[17] In doing so, the Commission found the Capital Plan consistent with Exchange Act Sections 17A(b)(3)(A), 17A(b)(3)(D), 17A(b)(3)(F), and 17A(b)(3)(I).[18]

On February 12, 2016, BOX, KCG, MIAX, and SIG[19] filed a petition for review in the D.C. Circuit, challenging the Commission's Approval Order as inconsistent with both the Exchange Act and the Administrative Procedure Act. On August 8, 2017, the Court issued an opinion concluding that the Approval Order failed to meet the standards of the Administrative Procedure Act and remanding the case to the Commission for further proceedings.[20] In so ruling, the Court did not address Petitioners' arguments that the Plan was inconsistent with applicable provisions of the Exchange Act. Rather, the Court emphasized that the Commission was required under the Exchange Act either to perform an independent analysis of the Capital Plan or to critically evaluate OCC's analysis of the Plan, and found that the Commission's analysis relied too heavily on OCC's representations.[21] The Court also described several illustrative areas where the Commission's Approval Order failed under the Administrative Procedure Act to adequately support its reasoning, including: (i) The reasonableness of the dividend rate under the Capital Plan; (ii) the reasonableness of the target capital amount established by the Capital Plan; (iii) the effect of the Capital Plan on net fees; (iv) the difference in treatment of refunds to clearing members and dividends to shareholders in certain circumstances under the Capital Plan; and (v) whether OCC complied with its own By-laws in adopting the Capital Plan.[22]

The Court did not vacate the Approval Order on remand, instead leaving the Plan in place and remanding ''to give the [Commission] an opportunity to properly evaluate the Plan.''[23] The Court determined not to unwind the plan at that time because ''the [Commission] may be able to approve the Plan once again, after conducting a proper analysis on remand,'' and because of assurances from the parties that, should the Commission disapprove the Plan, ''it will be possible to unwind the Plan at a later time.''[24] The Capital Plan therefore remained in effect during the pendency of the Commission's review.

On September 14, 2017, the Commission issued an order scheduling the filing of statements on review of the Capital Plan (''September 2017 Scheduling Order'').[25] On October 13, 2017, OCC filed a post-remand submission to the Commission in support of re-approval of the Capital Plan (''OCC October 2017 Post-Remand

[6] The five owners are the Chicago Board Options Exchange, Inc., International Securities Exchange LLC, NASDAQ OMX PHLX, LLC, NYSE MKT LLC, and NYSE Arca, Inc. The NYSE exchanges are owned by a common parent, Intercontinental Exchange, Inc., and both NASDAQ OMX PHLX and the International Securities Exchange are owned by NASDAQ. As a result, OCC's ownership essentially consists of three entities, although each exchange retains one vote on the OCC Board. *See* The Options Clearing Corporation Disclosure Framework for Financial Market Infrastructures, *https://www.theocc.com/components/docs/risk-management/pfmi-disclosures.pdf.*

[7] As of the date of this order, CBOE operates Cboe Options Exchange and is owned by CBOE Global Markets, which also owns the entities that operate Cboe C2 Options Exchange, Cboe BZX Exchange (formerly known as Bats BZX Exchange), and Cboe EDGX Exchange (formerly known as Bats EDGX Exchange). Nasdaq, Inc. owns NASDAQ OMX PHLX, LLC as well as International Securities Exchange, LLC, and operates other options exchanges: NASDAQ BX, NASDAQ GEMX, NASDAQ MRX, and NASDAQ Options Market.

[8] References to ''Non-Stockholder Exchanges'' throughout this order should be understood to mean ''Non-Equity Exchanges'' as defined in Article VIIB of OCC's By-Laws. *See* OCC By-laws, Article VIIB § 1. The Non-Stockholder Exchanges are: Miami International Securities Exchange, LLC, MIAX PEARL, LLC (together ''MIAX''), and BOX Options Exchange, LLC (''BOX''). Miami International Holdings, Inc. is the common owner of Miami International Securities Exchange, LLC and MIAX PEARL, LLC.

[9] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf* (last visited February 12, 2019).

[10] 15 U.S.C. 78s.

[11] 17 CFR 240.19b–4.

[12] Release No. 34–74136 (Jan. 26, 2015), 80 FR 5171 (Jan. 30, 2015) (SR–OCC–2015–02) (''Notice'').

[13] 17 CFR 200.30–3(a)(12).

[14] Release No. 34–74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR–OCC–2015–02).

[15] *See* 15 U.S.C. 78q–1(b)(3)(A); 15 U.S.C. 78q–1(b)(3)(F); 15 U.S.C. 78q–1(b)(3)(D); 15 U.S.C. 78q–1(b)(3)(I).

[16] *See* BATS Petition for Review (Mar. 16, 2015); BOX Petition for Review (Mar. 20, 2015); KCG Petition for Review (Mar. 20, 2015); MIAX Petition for Review (Mar. 20, 2015); SIG Petition for Review (Mar. 20, 2015).

[17] Release No. 34–77112, File No. SR–OCC–2015–02 (Feb. 11, 2016), 81 FR 8294 (Feb. 18, 2016).

[18] *See* 15 U.S.C. 78q–1(b)(3)(A); 15 U.S.C. 78q–1(b)(3)(D); 15 U.S.C. 78q–1(b)(3)(F); 15 U.S.C. 78q–1(b)(3)(I).

[19] BATS was initially a petitioner but later withdrew.

[20] *Susquehanna,* 866 F.3d at 443.

[21] *Id.* at 446, 447.

[22] *Id.* at 448–50.

[23] *Id.* at 451.

[24] *Id.*

[25] Release No. 34–81629, File No. SR–OCC–2015–02 (Sept. 14, 2017), 82 FR 44239 (Sept. 21, 2017) (''September 2017 Scheduling Order'').

Submission'').[26] That submission included certain material submitted by OCC pursuant to a request for confidential treatment. Separately, OCC and Petitioners reached an agreement that allowed Petitioners to access information subject to that request, and therefore Petitioners generally have been able to respond to the material in their submissions to the Commission.[27] On November 30, 2017, Petitioners (now consisting of SIG, BOX, MIAX, and Virtu) [28] filed a post-remand submission to the Commission in opposition to the Capital Plan (''Petitioners November 2017 Post-Remand Submission'').[29] On December 20, 2017, OCC filed a reply to the Petitioners November 2017 Post-Remand Submission (''OCC December 2017 Reply'').[30] On January 10, 2018, Petitioners filed a surreply to OCC's reply (''Petitioners January 2018 Surreply'').[31]

On August 23, 2018, OCC submitted an additional comment letter that included an analysis by Marc Brown of AlixPartners LLP (''AlixPartners'') of the reasonableness of the expected rate of return for the Stockholder Exchanges under the Capital Plan (''AlixPartners August 2018 Report''), as well as an inventory of documents and submissions that OCC stated were provided to the Commission during the course of these proceedings.[32] On August 24, 2018, Petitioner SIG submitted an additional comment letter (''SIG August 2018 Post-Remand Letter'').[33] On August 29, 2018, OCC submitted a response to the SIG August 2018 Post-Remand Letter.[34]

On September 4, 2018, OCC submitted an additional comment letter and accompanying PowerPoint slide deck describing how, in its view, the Commission could reapprove the Capital Plan consistent with the D.C. Circuit's opinion (''OCC September 2018 Path to Re-Approval'').[35] On September 21, 2018, OCC submitted a comment letter attaching a Market Note from Russell Rhoads, CFA of the TABB Group (''TABB September 2018 Report'').[36] On September 27, 2018, Petitioners submitted a comment letter responding to both the AlixPartners August 2018 Report and the OCC September 2018 Path to Re-Approval as well as reiterating Petitioners' view that the Commission is required by the Exchange Act to disapprove the Capital Plan on remand. Petitioners also attached an expert report from Professor Peter Easton of University of Notre Dame challenging the conclusions in the AlixPartners August 2018 Report (''Easton September 2018 Rebuttal Report'').[37] On October 9, 2018, Petitioner SIG submitted a comment letter attaching another Market Note from Russell Rhoads, CFA of the TABB Group (Oct. 8, 2018) (''TABB October 2018 Follow-Up Report'').[38] On October 15, 2018, OCC submitted a comment letter replying to the Easton September 2018 Rebuttal Report and attached an expert report addressing the issues raised in the Easton September 2018 Rebuttal Report.[39] In addition to the comments from OCC and the Petitioners, the Commission also received further comments pursuant to the September 2017 Scheduling Order, which generally support Petitioners' comments and overall opposition to the Capital Plan.[40]

IV. Description of the Plan

In its rule filing, OCC stated that the Capital Plan was designed to raise additional capital in connection with its increased responsibilities as a SIFMU and to facilitate prompt compliance with certain rules that the Commission proposed in March 2014 pertaining to SIFMUs and others.[41] Then-proposed Rule 17Ad–22(e)(15), which the Commission later adopted substantially as proposed,[42] required, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services

[26] Letter from Joseph P. Kamnik, General Counsel, OCC (Oct. 13, 2017) (''OCC October 2017 Post-Remand Submission''). OCC's submission included a declaration made by Craig S. Donohue, OCC's Executive Chairman and Chief Executive Officer (''Donohue Declaration'').

[27] *See* Release No. 34–82067, File No. SR–OCC–2015–02 (Nov. 13, 2017), 82 FR 54439, 54440 (Nov. 17, 2017) (stating that Petitioners represented that they have entered into a confidentiality agreement with OCC). As discussed below, the Commission has reviewed the requests for confidential treatment submitted by OCC and has determined to accord confidential treatment to the Confidential Materials. *See infra* note 32.

[28] On November 2, 2017, Virtu Financial Inc. and Virtu Financial LLC (together, ''Virtu'') filed a motion to substitute Virtu for KCG.

[29] Letter from David H. Thompson, Counsel for Petitioners Susquehanna International Group, LLP, Miami International Securities Exchange, LLC, BOX Options Exchange, Inc., Virtu Financial, Inc., and Virtu Americas, LLC (Nov. 30, 2017) (''Petitioners November 2017 Post-Remand Submission'').

[30] Letter from Joseph P. Kamnik, General Counsel, OCC (Dec. 20, 2017) (''OCC December 2017 Reply'').

[31] Letter from David H. Thompson, Counsel for Petitioners Susquehanna International Group, LLP, Miami International Securities Exchange, LLC, BOX Options Exchange, Inc., Virtu Financial, Inc., and Virtu Americas, LLC (Jan. 10, 2018) (''Petitioners January 2018 Surreply'').

[32] Letter from Jeffrey B. Korn, Counsel for OCC (Aug. 23, 2018) and attached Expert Report of Marc J. Brown, CFA (Aug. 23, 2018) (''AlixPartners August 2018 Report''). Many of the documents and submissions listed by OCC included requests for confidential treatment pursuant to 17 CFR 200.83 and the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. *See, e.g.,* Letter from Jeffrey B. Korn, Counsel for OCC (Sept. 4, 2018). For a list of materials for which OCC seeks confidential treatment (''Confidential Materials''), *see* AlixPartners August 2018 Report, Exhibit B. In general, OCC asserted that the Confidential Materials were entitled to confidential treatment because they contained confidential and proprietary information, including detailed financial information and proprietary commercial or financial information, the disclosure of which would be highly detrimental to OCC's business functions or would be highly likely to cause significant competitive harm to OCC. The Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they could be withheld from the public under the FOIA. FOIA Exemption 4 protects confidential commercial or financial information. 5 U.S.C. 552(b)(4). If, as here, the information was not required to be submitted, commercial or financial information is treated as confidential if it is not customarily disclosed to the public by the submitter. *Critical Mass Energy Project* v. *NRC,* 975 F.2d 871, 879 (D.C. Cir. 1992). In its requests for confidential treatment, OCC stated that it has not disclosed the Confidential Materials to the public and there is no indication to the contrary in the record. Thus, the Commission has determined to accord confidential treatment to the Confidential Materials.

[33] Letter from David H. Thompson, Counsel for SIG (Aug. 24, 2018) (''SIG August 2018 Post-Remand Letter'').

[34] Letter from Jeffrey B. Korn, Counsel for OCC (Aug. 29, 2018).

[35] Letter from Jeffrey B. Korn, Counsel for OCC (Sept. 4, 2018) and attached slide deck *The Path Forward for the Commission's Re-Approval of the OCC Capital Plan* (''OCC September 2018 Path to Re-Approval'').

[36] Letter from Jeffrey B. Korn, Counsel for OCC (Sept. 21, 2018) and attached Market Note from Russell Rhoads, CFA of the TABB Group, *OCC's Capital Plan: The Value of a Bird in the Hand* (Sept. 2018) (''TABB September 2018 Report'').

[37] Letter from David H. Thompson, Counsel for Petitioners (Sept. 27, 2018) (''Petitioners September 2018 Expert Rebuttal'') and attached Expert Report of Professor Peter D. Easton, Ph.D. (Sept. 24, 2018) (''Easton September 2018 Rebuttal Report'').

[38] Letter from David H. Thompson, Counsel for Petitioners (Oct. 9, 2018).

[39] Letter from Jeffrey B. Korn, Counsel for OCC (Oct. 15, 2018) (''OCC October 2018 Expert Reply'') and attached Expert Report of Marc J. Brown, CFA (Oct. 15, 2018) (''AlixPartners October 2018 Reply'').

[40] Comments provided pursuant to the September 2017 Scheduling Order are available on the Commission's website at *https://www.sec.gov/comments/sr-occ-2015-02/occ201502.shtml.* These additional comments do not raise substantive issues beyond those raised by Petitioners. Accordingly, we consider these additional comments together with the submissions and comments made by OCC and Petitioners described above.

[41] *See* Notice, *citing* Release No. 34–71699 (Mar. 12, 2014), 79 FR 29507 (May 22, 2014).

[42] *See* Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016).

as a going concern if those losses materialize.[43] The then-proposed rule also required ''a viable plan'' for raising additional equity should OCC's equity fall below an amount required by the Rule.[44]

OCC represented that it reviewed a range of risk scenarios and modeled potential losses arising from business, operational, and pension risks, and, based on those results, believed that it was appropriate to significantly increase its capital. OCC also represented that, after evaluating alternate sources of capital funding, including increasing fees or suspending refunds to clearing members, OCC's Board of Directors (the ''Board'') opted to approve the proposed Capital Plan.[45]

Under the Capital Plan, OCC annually will determine a target capital requirement (''Target Capital Requirement'') consisting of the baseline amount of capital OCC believes is required as well as a buffer amount to offset potential losses. To assist OCC in meeting the initial Target Capital Requirement, the Stockholder Exchanges provided capital to OCC (''Capital Contribution'') upon implementation of the Plan in March 2015 and entered into an agreement (''Replenishment Capital Agreement'') to provide additional replenishment capital (''Replenishment Capital'') under specific circumstances, as detailed below. In return for this initial investment and the obligation to provide additional capital, the Stockholder Exchanges are eligible to receive dividends from OCC pursuant to an OCC internal policy (''Dividend Policy''). Additionally, OCC will set its fees annually to cover its estimated operating expenses plus a ''Business Risk Buffer'' pursuant to an OCC internal policy (''Fee Policy''). Finally, clearing members will be eligible to receive refunds annually, under certain circumstances, pursuant to an OCC internal policy (''Refund Policy''). The individual components of the Capital Plan are described in greater detail below.

A. Target Capital Requirement

The Target Capital Requirement consists of: (i) A ''Baseline Capital Requirement'' plus (ii) a ''Target Capital Buffer.'' The Baseline Capital Requirement is equal to the greater of: (a) Six months budgeted operating expenses for the following year; (b) the maximum cost of the recovery scenario from OCC's recovery and wind-down plan; or (c) the cost to OCC of winding down operations, as set forth in its recovery and wind-down plan. The Target Capital Buffer is linked to plausible loss scenarios from business, operational, and pension risks and is designed to provide a significant capital cushion to offset potential business losses.[46]

B. Capital Contribution and Replenishment Capital Agreement

To assist OCC in meeting the initial Target Capital Requirement, the Capital Plan requires OCC's Stockholder Exchanges to provide a Capital Contribution pursuant to their Class B Common Stock on a *pro rata* basis. When it filed the Capital Plan with the Commission, OCC proposed the Capital Contribution to be $150 million, and each of the Stockholder Exchanges contributed their *pro rata* share of that amount to OCC pursuant to the Capital Plan.[47]

In addition to the Capital Contribution, the Stockholder Exchanges agreed to a Replenishment Capital Agreement, under which they each commit to provide Replenishment Capital if OCC's total shareholders' equity falls below certain thresholds. The first of these thresholds—referred to as the Hard Trigger—would be reached if OCC's shareholders' equity fell below 125% of the Baseline Capital Requirement. Upon such occurrence, the Board would determine whether to attempt a recovery or a wind-down of OCC's operations,[48] or a sale or similar transaction, subject in each case to any necessary stockholder consent.[49] OCC stated that the Hard Trigger would occur only as the result of a significant, unexpected event. The Hard Trigger is a sign that corrective action must be taken in the form of a mandatory Replenishment Capital call.

If the Hard Trigger is reached, under the Capital Plan, the Stockholder Exchanges would be obligated to provide a committed amount of Replenishment Capital on a *pro rata* basis. The provision of Replenishment Capital is capped at the excess of: (i) The lesser of either the Baseline Capital Requirement at the time of relevant funding or $200 million,[50] minus (ii) outstanding Replenishment Capital (collectively, the ''Cap'').[51] In exchange for any Replenishment Capital made under the Replenishment Capital Agreement, OCC would issue the Stockholder Exchanges a new class of OCC common stock (''Class C Common Stock'').

The Replenishment Capital Agreement also contains a ''Soft Trigger,'' which is a warning sign that OCC's capitalization has fallen to a level that requires action to prevent it from falling to certain levels that OCC deems unacceptable. The Soft Trigger is reached, under the Capital Plan, when

[43] *See* Release No. 34–71699 (Mar. 12, 2014), 79 FR 29508 (May 22, 2014); 17 CFR 240.17Ad–22(e)(15)(ii).

[44] *See* Release No. 34–71699 (Mar. 12, 2014), 79 FR 29508 (May 22, 2014); 17 CFR 240.17Ad–22(e)(15)(iii). Specifically, the Rule, as adopted, requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, maintain a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required by Rule 17Ad–22(e)(15)(ii).

[45] *See* OCC's Written Statement in Support of Affirming March 6, 2015 Order Approving Capital Plan (October 7, 2015) (''OCC October 2015 Support Statement'').

[46] OCC determined that an appropriate initial ''Target Capital Requirement'' was $247 million, reflecting a ''Baseline Capital Requirement'' of $117 million, which was equal to six-month projected operating expenses, plus a ''Target Capital Buffer'' of $130 million.

[47] *See* OCC October 2015 Support Statement.

[48] On August 23, 2018, the Commission issued a no objection to an advance notice and approved a proposed rule change by OCC to adopt a Recovery and Wind-Down Plan (''RWP'') and to implement enhanced tools for managing a potential recovery scenario (''Tools''). Release No. 34–83916 (Aug. 23, 2018), 83 FR 44076 (Aug. 29, 2018) (SR–OCC–2017–020); Release No. 34–83927 (Aug. 23, 2018), 83 FR 44083 (Aug. 29, 2018) (SR–OCC–2017–809); Release No. 34–83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR–OCC–2017–021); Release No. 34–83928 (Aug. 23, 2018), 83 FR 44109 (Aug. 29, 2018) (SR–OCC–2017–810). Under the RWP, if the Board decides to wind-down OCC's operations, then OCC will access Replenishment Capital in the amount the Board determines is sufficient to fund the wind-down, subject to the maximum amount the Stockholder Exchanges would be obligated to provide under the Capital Plan (*see infra* note 51 and accompanying text). If the Board decides to attempt a recovery of OCC's capital and business, then OCC will access Replenishment Capital in the amount sufficient to return shareholders' equity to $20 million above the Hard Trigger, subject to the maximum amount the Stockholder Exchanges would be obligated to provide under the Capital Plan (*see infra* note 51).

[49] Article IV of OCC's Certificate of Amendment of Certificate of Incorporation requires the approval of a majority of the issued and outstanding shares of each series of Class B Common Stock, voting separately as a series, to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of the Corporation, or to authorize or consent to the dissolution of the corporation.

[50] According to OCC, the $200 million takes into account projected growth in the Baseline Capital Requirement for the foreseeable future, and OCC estimated that the Baseline Capital Requirement would not exceed $200 million before 2022.

[51] For example, if the Baseline Capital Requirement is greater than $200 million, then the Replenishment Capital that could be accessed by OCC would be capped at $200 million minus any outstanding Replenishment Capital. Therefore, if there is no outstanding Replenishment Capital, OCC could access up to $200 million. If on the other hand, the Baseline Capital Requirement is $100 million, then OCC could access Replenishment Capital up to $100 million minus any Replenishment Capital outstanding.

OCC's shareholders' equity falls below the sum of: (i) The Baseline Capital Requirement and (ii) 75% of the Target Capital Buffer. Upon such occurrence, OCC's senior management and the Board will evaluate options to restore the shareholders' equity to the Target Capital Requirement, including, but not limited to, increasing fees and/or decreasing expenses.

In addition, the Board will review the Replenishment Capital Agreement on an annual basis. While the Replenishment Capital amount will increase as the Baseline Capital Requirement increases, if the Baseline Capital Requirement approaches or exceeds $200 million, the Board will review and revise the Capital Plan, as needed, to address potential future needs for Replenishment Capital higher than the $200 million cap. OCC also stated that its management will monitor OCC's shareholders' equity to identify additional triggers or reduced capital levels that may require action.

C. Fee Policy, Refund Policy, and Dividend Policy

Under the Capital Plan, OCC also implemented a Fee Policy, Refund Policy, and Dividend Policy designed to maintain OCC's shareholders' equity above the Baseline Capital Requirement. Changes to the Fee Policy, Refund Policy, and Dividend Policy require the affirmative vote of two-thirds of the directors then in office and unanimous approval by the holders of OCC's outstanding Class B Common Stock. Any changes are subject to the filing requirements of Section 19(b) of the Exchange Act and the rules and regulations thereunder.

1. Fee Policy

Under the Fee Policy, OCC will set its fee structure at a level that will cover OCC's estimated operating expenses plus a Business Risk Buffer. OCC stated that the purpose of the Business Risk Buffer is to ensure that OCC accumulates sufficient funds to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Specifically, in setting fees each year, OCC will calculate an annual revenue target based on a forward twelve months expense forecast divided by the difference between one and the Business Risk Buffer of 25% (*i.e.,* OCC will divide the expense forecast by 0.75).[52] OCC stated that establishing the Business Risk Buffer at 25% would allow OCC to manage unexpected fluctuations in expenses or revenue.[53]

OCC stated that the 25% Business Risk Buffer would be lower than OCC's historical ten-year average buffer of 31%. OCC stated that the lower buffer would permit it to charge lower upfront fees to market participants, and thus become less reliant on refunds to clearing members to return any excess fees paid.[54] In addition, by capitalizing OCC through shareholders' equity (*i.e.,* the Capital Contribution), OCC represented that it would be positioned to charge lower fees that are more closely tied to its projected operating expenses, rather than annually generating a larger surplus to address business, operational, and pension risks. OCC stated that the Business Risk Buffer will remain at 25% as long as OCC's shareholders' equity remains above the Target Capital Requirement. OCC represented that it will review its fee schedule on a quarterly basis to manage revenues as close to the 25% Business Risk Buffer as possible, and, if the fee schedule needs to be changed to achieve the 25% Business Risk Buffer, OCC would file a proposed rule change with the Commission.[55]

2. Refund Policy

Under the Refund Policy, except at a time when Replenishment Capital is outstanding, OCC will declare a refund to clearing members in December of each year using the formula set out in the Refund Policy. Specifically, the refund will equal 50% of the excess of: (i) Pre-tax income for the year in which the refund is declared over (ii) the sum of the following: (a) The amount of pre-tax income after the refund necessary to produce after-tax income for such year sufficient to maintain shareholders' equity at the Target Capital Requirement for the following year; and (b) the amount of pre-tax income after the refund necessary to fund any additional reserves or additional surplus not already included in the Target Capital Requirement.

The Refund Policy states that OCC will declare refunds, if any, in December of each year, and such refunds would be paid in the following year after OCC issues its audited financial statements, provided that: (i) The payment does not result in total shareholders' equity falling below the Target Capital Requirement and (ii) the payment is otherwise permitted by Delaware law, federal laws, and regulations.[56]

OCC will not make refund payments while Replenishment Capital is outstanding and will resume refunds after the Replenishment Capital is repaid in full and the Target Capital Requirement is restored. However, OCC will not resume paying refunds and will recalculate how refunds are made if, for more than twenty-four months: (i)

[52] Put another way, the annual revenue target will be the forward twelve months expense forecast plus 33% of that forecast.

[53] For example, fees could generate less revenue than expected if trading volume decreases. According to OCC, because OCC's clearing fee schedules typically reflect different rates for different categories of transactions, fee projections will include projections of relative volume in each category. Therefore, the clearing fee schedule will be set to achieve the annual revenue target through a blended or average rate per contract, multiplied by total projected contract volume.

[54] OCC stated that the Capital Plan would allow OCC to refund approximately $40 million from 2014 fees to clearing members and to reduce fees in an amount to be determined by the Board. *See* Notice at 5174. On December 17, 2015, OCC issued a press release announcing the declaration of a refund, dividend, and fee reduction, pursuant to the Capital Plan. *See* OCC Press Release, ''OCC Declares Clearing Member Refund and Dividend for 2015 and Reduction of Fees under Approved Capital Plan,'' *http://www.optionsclearing.com/about/newsroom/releases/2015/12_17.jsp* (last visited February 12, 2019) (''OCC December 2015 Press Release''). For 2016, OCC declared a refund of approximately $46.6 million to clearing members and a dividend of approximately $25.6 million to Stockholder Exchanges. *See* OCC Press Release, ''OCC Declares Clearing Member Refund and Dividend for 2016,'' *https://www.theocc.com/about/newsroom/releases/2017/March-28-OCC-Declares-Clearing-Member-Refund-Dividend-2016.jsp* (last visited February 12, 2019) (''OCC March 2016 Press Release'').

[55] On January 20, 2016, OCC filed a proposed rule change to revise its Schedule of Fees, which OCC stated would lower clearing fees by an average of 19%. *See* Release No. 34–77041 (Feb. 3, 2016), 81 FR 6917 (Feb. 9, 2016). On March 2, 2016, OCC filed a proposed rule change that modified its fee schedule from four tiers to two. *See* Release No. 34–77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016). OCC stated that the fee change was revenue neutral when compared to its existing fee structure, but the fee change raised the per contract fee for trades with contracts between 500 and 2,000, lowered the threshold for the flat per trade fee from greater than 2,000 to greater than 1,370 contracts, and raised the flat fee on such contracts from $46 to $55. On September 30, 2016, OCC filed a proposed rule change to revise its Schedule of Fees to implement an increase in clearing fees to maintain the 25% Business Risk Buffer. *See* Release No. 34–79028 (Oct. 3, 2016), 81 FR 69885 (Oct. 7, 2016). That proposed fee change lowered the threshold for the $55 per trade fee from 1,370 to 1,100+, and increased fees for contracts of 1–1,100 from $0.041 per contract to $0.050 per contract. On January 30, 2018, OCC filed a proposed rule change to revise its Schedule of Fees to implement an increase in clearing fees to maintain the 25% Business Risk Buffer. *See* Release No. 34–82596 (Jan. 30, 2018), 83 FR 4944 (Feb. 2, 2018). On August 1, 2018, OCC withdrew that filing, leaving the threshold for the $55 per trade fee at 1,100+, and the fee for contracts of 1–1,100 at $0.050 per contract.

[56] In 2015, OCC announced a 2014 refund of $33.3 million, a 2015 refund of $39 million, and special refund of $72 million. *See* OCC December 2015 Press Release. In 2016, OCC announced a refund of $46.6 million. *See* OCC March 2016 Press Release. In 2017, OCC announced a refund of $78.7 million. *See* OCC 2017 Annual Report at 40, note 9; *https://www.theocc.com/components/docs/about/annual-reports/occ-2017-annual-report.pdf* (last visited February 12, 2019) (''OCC 2017 Annual Report'').

Replenishment Capital remains outstanding or (ii) the Target Capital Requirement is not restored.

3. Dividend Policy

Under the Dividend Policy, OCC will pay dividends to Stockholder Exchanges as consideration for their Capital Contribution and commitment to provide Replenishment Capital under the Replenishment Capital Agreement. OCC will declare dividends, if any, in December of each year, and such dividends would be paid in the following year after OCC issues its audited financial statements, provided that: (i) The payment does not result in total shareholders' equity falling below the Target Capital Requirement and (ii) the payment is otherwise permitted by Delaware law, federal laws, and regulations.

Pursuant to the Dividend Policy, except at a time when Replenishment Capital is outstanding, OCC will declare a dividend on its Class B Common Stock in December of each year in aggregate equal to the excess of: (i) After-tax income for the year, after application of the Refund Policy [57] over (ii) the sum of: (A) The amount required to be retained to maintain total shareholders' equity at the Target Capital Requirement for the following year, plus (B) the amount of any additional reserves or additional surplus not already included in the Target Capital Requirement.[58]

Similar to the Refund Policy, if Replenishment Capital is outstanding, OCC will not pay dividends. OCC would, however, resume dividends after the Replenishment Capital is repaid in full and the Target Capital Requirement is restored through the accumulation of retained earnings, even if the time of repayment exceeds twenty-four months. In the event that refunds are not tax-deductible, OCC represents that it will amend the Refund Policy and Dividend Policy to restore the relative economic benefits between the recipients of the refunds and the Stockholder Exchanges to what the Capital Plan currently provides.

V. Discussion

Under Section 19(b)(2)(C) of the Exchange Act, the Commission must approve a proposed rule change of an SRO if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder.[59] If it does not make such a finding, the Commission must disapprove the proposed rule change.[60] Under Rule 700(b)(3) of the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [61] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[62] Any failure of an SRO to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the SRO.[63]

The Commission is disapproving the proposed rule change implementing the Capital Plan because the information before us is insufficient to support a finding that the Plan is consistent with the Exchange Act. Specifically, as explained below, we find that OCC has failed to meet its burden to demonstrate that the Capital Plan is consistent with the requirements of: (1) Exchange Act Section 19(g)(1), and (2) Exchange Act Section 17A(b)(3)(I).

First, Exchange Act Section 19(g)(1) states, in part, that ''[e]very [SRO] shall comply with the provisions of this chapter, the rules and regulations thereunder, and *its own rules*. . . .'' [64] One of OCC's rules—Article VIIB of its By-laws—states that Non-Stockholder Exchanges ''will be promptly provided with information that the Executive Chairman considers to be of competitive significance to such [Non-Stockholder Exchanges] that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board of Directors or any Committee of the Board of Directors.'' [65] The By-laws further provide that a ''requesting [Non-Stockholder Exchange] shall be afforded the opportunity to make presentations to the Board of Directors or an appropriate Committee of the Board of Directors.'' [66] The Non-Stockholder Exchanges were not notified of the Capital Plan before its adoption, and the Commission cannot determine whether or how the Executive Chairman concluded that the Capital Plan lacked competitive significance such that notification to the Non-Stockholder Exchanges was not required. Thus, there are questions as to whether OCC complied with its By-laws and, if not, whether the proposed rule change is consistent with Section 19(g) of the Act. As explained further below, based on the information before us, the Commission is unable to resolve these questions.

Second, Petitioners have questioned whether the Plan's Dividend Policy is consistent with Section 17A(b)(3)(I) of the Exchange Act, which prohibits the rules of a clearing agency from imposing a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[67] As explained further below, based on the information before us, we cannot determine whether the Plan, as implemented, has burdened competition. Nor do we have sufficient information to determine that the rate of return provided by the dividends under the Plan is reasonable, such that the Stockholder Exchanges are not unfairly advantaged in a manner inconsistent with the Act.

For these reasons, we are unable to find on the record before us that the Capital Plan is consistent with the Exchange Act.

A. The Commission Lacks Sufficient Information To Determine Whether OCC Complied With Its By-Laws in Adopting the Capital Plan

Petitioners contend that the Capital Plan is inconsistent with Section 19(g) of the Exchange Act because the Capital Plan was of competitive significance to the Non-Stockholder Exchanges, yet OCC failed to notify the Non-Stockholder Exchanges of the Plan or provide them the opportunity to make presentations to the Board. According to Petitioners, OCC's actions in this regard do not comply with its By-laws. In addressing Petitioners' contention in the Approval Order, we noted that we would not approve a proposed rule change of an SRO before the SRO had completed all actions required to be taken by its constitution, articles of incorporation, By-laws, rules, or corresponding instruments. But OCC represented that it had done so. Petitioners' contention also raised what

[57] If the Refund Policy has been eliminated, the refunds shall be deemed to be $0.

[58] In 2015, OCC announced a dividend of approximately $17 million for 2015 pursuant to the Capital Plan. *See* OCC December 2015 Press Release. In 2016, OCC announced a dividend of approximately $25.6 million for 2016. *See* OCC March 2016 Press Release. In 2017, OCC announced a dividend of approximately $32.5 million for 2017. *See* OCC 2017 Annual Report at 32.

[59] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[60] 15 U.S.C. 78s(b)(2)(C)(ii).

[61] 17 CFR 201.700(b)(3).

[62] *Id.*

[63] *Id.*

[64] 15 U.S.C. 78s(g)(1) (emphasis added).

[65] OCC By-laws, Article VIIB § 1.01.

[66] OCC By-laws, Article VIIB § 1.02.

[67] 15 U.S.C. 78q–1(b)(3)(I).

we viewed as the distinct question of whether, while nominally taking the required actions, the Board nonetheless failed to comply with its responsibilities under relevant corporate governance principles, but we concluded that the issue was ''not appropriately addressed by the Commission in the context of reviewing this rule filing.'' [68]

On review, however, the D.C. Circuit found that the Commission's analysis regarding OCC's compliance with its By-laws gave ''short shrift'' to Petitioners' objection and relied too heavily on OCC's representation that it had completed all actions required. As a result, the Court instructed that ''[o]n remand, the [Commission] must resolve Petitioners' argument that OCC could not reasonably have considered the Plan to be competitively insignificant. Or, if the [Commission] concludes that this does not matter, it must give a reasoned explanation why.'' [69]

On remand, OCC contends first that the Petitioners misconstrue the application of Section 19(g) in this context, asserting that the notification requirements of Article VIIB are merely ''procedural'' and therefore not relevant to the Commission's approval of the Capital Plan. OCC next contends that, even if compliance with Article VIIB were relevant to the Commission's approval of the Plan, its provisions do not apply here, both because the Executive Chairman never made an affirmative determination that the Capital Plan was of competitive significance and because there has been no showing that the Plan was of competitive significance. Finally, OCC asserts that even if it did not comply with its By-laws, any violation was harmless because Petitioners have had ample time and opportunity throughout the Commission review process to present their views on the Plan.[70]

As discussed in more detail below, the notification provisions in Article VIIB of OCC's By-laws serve an important role in ensuring that OCC meets its obligations to its participants under the Exchange Act. Therefore, compliance with these provisions is relevant to our consideration of the Capital Plan. Based on the information before us, however, we cannot determine whether or how the Executive Chairman concluded that the Capital Plan lacked competitive significance such that notification to the Non-Stockholder Exchanges was not required. Nor do we have sufficient information to ourselves determine that the Plan was of no competitive significance. We are therefore unable to find that OCC's adoption of the Plan complied with its own rules. Finally, we disagree with OCC's contention that violating its own By-laws in this respect would be harmless.

1. Compliance With Article VIIB of OCC's By-Laws Is Relevant to Our Analysis of the Capital Plan

OCC first asserts that Petitioners misconstrue the application of both Section 19(g) and the D.C. Circuit's *Susquehanna* Opinion in focusing on the merits of the Executive Chairman's determination of competitive significance under Article VIIB of its By-laws. According to OCC, the Exchange Act requires the Commission to review the substance of the Capital Plan, not the process by which it was adopted. Thus, any purported violation of a ''procedural'' By-law—as OCC characterizes Article VIIB—is not relevant to the Commission's consideration of whether to approve the Capital Plan under Section 19(b).[71]

Petitioners counter that the By-laws are not merely procedural but rather provide substantive protection to the Non-Stockholder Exchanges.[72] Therefore, Petitioners argue, any determination made by the Executive Chairman pursuant to those By-laws is subject to Commission review under the Exchange Act and judicial review by the courts.

We recognize that in the Approval Order we concluded that whether the Board complied with its governance obligations was not the focus of our review of the rule filing.[73] But, in light of the D.C. Circuit's specific instruction, we have revisited the record and this conclusion. And, for the reasons discussed below, we now conclude that, in the context of this proposed rule filing, it is appropriate to review OCC's compliance with the notification provisions in Article VIIB of its By-laws.

As an SRO, OCC is subject to the rule filing requirements in Section 19(b)(1) of the Exchange Act [74] and Rule 19b–4(c) thereunder.[75] These requirements serve several important functions, including helping to ensure that the clearing agency's rules are consistent with all of the provisions of the Exchange Act and the rules and regulations thereunder. Exchange Act Section 19(g)(1), in turn, requires that an SRO comply with all of its own rules, without distinction as to whether those rules are procedural or otherwise.[76] And Article VIIB of OCC's By-laws furthers several substantive purposes embodied elsewhere in the Exchange Act and the rules thereunder.

In particular, Exchange Act Section 17A(b)(3)(C) requires that the rules of a registered clearing agency assure fair representation of its shareholders and participants in the selection of its directors and the administration of its affairs. And Rule 17Ad–22(d)(8), applicable to OCC at the time it adopted the Capital Plan, required OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that, among other things, support the objectives of its owners and participants.[77] The Commission has explained that this obligation is designed to promote the ability of the clearing agency to serve the interests of various constituents and the interests of the general public.[78]

Before 2002, any new market desiring to clear options transactions through OCC was required to purchase common stock in OCC and execute a stockholders agreement, thereby becoming a Stockholder Exchange and obtaining representation on the Board.[79] But in 2002, OCC sought to amend its By-laws and rules to permit OCC to provide clearing services to new options exchanges without having those exchanges become stockholders.[80] Pursuant to that proposed rule change, although the newly created Non-Stockholder Exchanges would not have representation on OCC's board, the members of the Non-Stockholder Exchanges that also were clearing members of OCC would be ''participants'' in OCC within the meaning of Section 17A(b)(3)(C) of the

[68] Approval Order at 8305.

[69] *Susquehanna,* 866 F.3d at 450–51.

[70] *See* OCC October 2017 Post-Remand Submission at 27; OCC September 2018 Path to Re-Approval at 49.

[71] OCC October 2017 Post-Remand Submission at 27.

[72] Petitioners November 2017 Post-Remand Submission at 9.

[73] Approval Order at 8305.

[74] 15 U.S.C. 78s(b)(1).

[75] 17 CFR 240.19b–4(c).

[76] 15 U.S.C. 78s(g)(1).

[77] 17 CFR 240.17Ad–22(d)(8). The Commission has since adopted enhanced governance requirements in Rule 17Ad–22(e)(2)(vi). 17 CFR 240.17Ad–22(e)(vi). Because OCC is a covered clearing agency, the governance requirements in Rule 17Ad–22(e)(2)(vi) apply to OCC while the requirements in Rule 17Ad–22(d)(8), applicable to OCC at the time it adopted the Capital Plan, no longer apply. *See* Rule 17Ad–22(d), 17 CFR 240.17Ad–22(d) (''Each registered clearing agency *that is not a covered clearing agency* shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable. . . .'').

[78] Release No. 34–68080 (Oct. 22, 2012), 77 FR 66220, 66252 (Nov. 2, 2012).

[79] *See* Release No. 34–46469 (Sept. 6, 2002), 67 FR 58093 (Sept. 13, 2002) (SR–OCC–2002–02) (''2002 By-law Amendment'').

[80] *See id.*

Exchange Act, and therefore would be entitled under that provision to fair representation in the selection of OCC's directors and the administration of its affairs.[81] As participants, the Non-Stockholder Exchanges would also benefit from Rule 17Ad–22(d)(8)'s requirement that OCC's governance arrangements support their objectives.

OCC represented to the Commission that it would assure the fair representation required under Section 17A(b)(3)(C) for the new category of ''non-equity exchanges'' (referred to throughout this order as ''Non-Stockholder Exchanges'') [82] through what is now Article VIIB of the OCC By-laws, and in particular the requirement that:

> OCC management will (1) provide non-equity exchanges with the opportunity to make presentations to the OCC board or the appropriate board committee upon request and (2) will promptly pass on to non-equity exchanges any information that management considers to be of competitive significance to such exchanges disclosed to exchange directors at or in connection with any meeting or action of the OCC board or any board committee.[83]

This representation was essential to the Commission's decision to approve the 2002 By-law Amendment.[84] The Commission concluded that these By-law provisions ''should help to ensure that no burden on competition that is not necessary or appropriate in furtherance of the [Exchange] Act will occur.'' [85] And, on that basis, the Commission found that OCC had met its burden of demonstrating that the 2002 By-law Amendment was ''consistent with the requirements of Section[s] 17A(b)(3)(C) and (I)'' of the Exchange Act.[86]

Given the pivotal function of Article VIIB in ensuring that OCC meets its obligations to the Non-Stockholder Exchanges as participants of OCC, the Commission does not agree with OCC's assertion that compliance with Article VIIB's procedures can be disregarded in the review of proposed rule changes under Exchange Act Section 19(b)(2)(C). To conclude otherwise would thwart the protection provided to OCC's participants by the notification provisions in these By-laws by depriving them of the opportunity—in appropriate circumstances—to influence the development of proposals of competitive significance.[87] It would also limit the Commission's ability to ensure that OCC complies with its own rules and regulatory obligations in the first instance.[88]

2. Article VIIB of OCC's By-Laws May Have Been Implicated by the Capital Plan

OCC also contends that, even if compliance with these By-laws is generally relevant to proposed rule changes, Article VIIB was not implicated by the Capital Plan. OCC first asserts that the Executive Chairman has no obligation to share information with the Non-Stockholder Exchanges unless and until he makes an ''affirmative, subjective'' determination that the information is of competitive significance, and no such determination was made here.[89] OCC also states that its By-laws make clear that the Executive Chairman alone has the discretion to make this determination and that, in exercising his business judgment, he never considered the Capital Plan to be of competitive significance to the Non-Stockholder Exchanges.[90]

Petitioners, on the other hand, state that—at a minimum—the prompt notice requirement in the By-laws implies that the Executive Chairman must actually determine what information bears such competitive significance.[91] They also assert that the discretionary authority under the By-laws does not grant the Executive Chairman an unconditional license to engage in arbitrary and capricious decision-making, but rather requires that any such decision be both procedurally and substantively reasonable.[92] Petitioners suggest that the statement by the Executive Chairman in the materials submitted by OCC does not establish that he actually made a determination that the Plan was not competitively significant and contend that OCC provided no evidence that the Executive Chairman made any such determination.[93]

a. The Executive Chairman Must Consider the Issue of Competitive Significance and That Determination Is Reviewable

We reject OCC's assertion that Article VIIB requires the Executive Chairman to notify Non-Stockholder Exchanges only if the Executive Chairman decides to consider whether a matter is of competitive significance and affirmatively determines that it is, but does not require the Executive Chairman to undertake such an inquiry.[94] In our view, such an interpretation is inconsistent with the purpose OCC itself ascribed to this provision at the time it was proposed. As described above, OCC represented to the Commission that this provision would help to ensure that Non-Stockholder Exchanges were provided the fair representation they are entitled to as participants of OCC. The Commission relied on this representation in approving the By-law.[95] If the Executive Chairman is not required to assess the competitive significance of matters coming before the Board—and can avoid triggering the By-law's notice requirements by merely refraining from such consideration—this protection is illusory.[96]

We also disagree with OCC's contention that applying an ''objective, reasonableness standard'' would ''directly conflict[ ] with the language of the bylaw,'' which commits the competitive significance determination to the sole discretion of the Executive Chairman.[97] OCC's By-laws do leave the

[81] *Id.* at 58094.

[82] *See supra* note 8.

[83] *See id.* at 58094, n.6 (citing Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (Jul. 8, 2002)).

[84] *Id.* at 58095.

[85] *See id.* at 58095.

[86] *See id.*

[87] *See also* General Instructions for Form 19b–4, Section E, *https://www.sec.gov/files/form19b-4.pdf* (last visited February 12, 2019) (''The Commission will not approve a proposed rule change . . . before the self-regulatory organization has completed all action required to be taken under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto (excluding action specified in any such instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law).'').

[88] The Commission has the ability under Section 19(h) of the Exchange Act to initiate proceedings against a clearing agency such as OCC for failure to comply with its own rules. But such proceedings cannot remedy the impact that a failure to comply with OCC's own rules during the process of developing proposals of competitive significance could have on the final result.

[89] OCC September 2018 Path to Re-Approval at 38.

[90] Donohue Declaration at para. 22; OCC October 2017 Post-Remand Submission at 25.

[91] Petitioners November 2017 Post-Remand Submission at 7.

[92] Petitioners November 2017 Post-Remand Submission at 8.

[93] *Id.* at 7–8.

[94] OCC September 2018 Path to Re-Approval at 38.

[95] *See* 2002 By-law Amendment at 58095.

[96] OCC contends that, because its By-laws generally provide OCC's Board with authority to interpret the provisions of the By-laws, deference must be given to the Board's interpretation of Article VIIB. *See* OCC September 2018 Path to Re-Approval at 38 (quoting Article III, Section 8 of OCC's By-laws). The Commission believes, however, that there are limits to such authority and to the deference afforded to the Board's interpretations. OCC's Board does not have the authority to interpret the provisions of its By-laws in a manner not consistent with the Exchange Act or the rules and regulations thereunder. Nor can the Board interpret its By-laws in a manner inconsistent with the purpose OCC itself ascribed to this provision at the time it was proposed, particularly where—as here—that representation formed a basis for the Commission's approval.

[97] OCC October 2017 Post-Remand Submission at 26–27 (internal quotation marks omitted).

determination of competitive significance to the discretion of the Executive Chairman. But, given the importance of the By-law provisions and the status of such provisions as SRO rules under Section 19(b) of the Exchange Act, the Commission believes that there must be a mechanism for ensuring that this discretion is not abused.

b. The Commission Lacks Sufficient Information in the Record To Determine Whether OCC Complied With Article VIIB

We conclude that the information before the Commission is insufficient for us to make the necessary determinations as to whether or how the Executive Chairman exercised his discretion under Article VIIB with respect to the Capital Plan.

Although the record includes comments regarding the potential burden on competition of the Capital Plan, OCC has not provided any contemporaneous records regarding a competitive significance determination. Rather, the only information in the record is contained in an affidavit submitted in connection with OCC's October 2017 Post-Remand Submission. In that affidavit, OCC's Executive Chairman declared: ''In the exercise of my business judgment, I never considered the Capital Plan to be of competitive significance to the Non-Equity Exchanges.'' [98] In addition, OCC's October 2017 Post-Remand Submission included the following statement:

> Here, as discussed previously, the Executive Chairman, in the exercise of his business judgment, never determined that he ''considers [the Capital Plan] to be of competitive significance to [the] Non-Equity Exchanges.'' Nor did anyone on OCC's Board ever suggest that the Capital Plan was of competitive significance and its development was required to be disclosed to non-Stockholder Exchanges pursuant to OCC's bylaw, despite the OCC Board's knowledge of the comments submitted on the record by the Petitioners to that effect.[99]

These statements do not establish that the Executive Chairman gave consideration to the question of whether the Capital Plan was competitively significant prior to the adoption of the Capital Plan. Rather, the statement that the Executive Chairman never determined that he ''considers the Capital Plan to be of competitive significance to the Non-Equity Exchanges'' [100] could be consistent with either of two things: (i) The Chairman considered the information but did not find that it was of competitive significance; or (ii) the Chairman did not consider the question of whether the information would be of competitive significance. Given the lack of clarity of this statement, and the lack of other contemporaneous records demonstrating that the Executive Chairman actually determined that the Capital Plan is not competitively significant or—if he did—the basis for that determination, we lack sufficient information to conclude that any exercise of the Executive Chairman's discretion complied with Article VIIB.

3. OCC's Focus on Post-Implementation Evidence of Competitive Effect Is Neither Justified nor Persuasive

OCC also maintains that, regardless of what the Executive Chairman considered, the Capital Plan has not proven to be competitively significant to the Non-Stockholder Exchanges and, therefore, the Non-Stockholder Exchanges were not in fact required to be notified under Article VIIB. In doing so, OCC focuses on competition between the Stockholder Exchanges and Non-Stockholder Exchanges for listed options order flow, and asserts that there is no evidence suggesting that the payment of dividends has altered such competition in the two years in which they have been paid.[101] OCC states that there is no evidence that prices for execution services have been affected by the Capital Plan, which—in its view—indicates that there has been no competitive effect.[102] Furthermore, OCC maintains that the Stockholder Exchanges' receipt of dividends is in exchange for their capital contributions and Replenishment Capital commitments, which the Non-Stockholder Exchanges did not make.[103] OCC adds that, even if the Dividend Policy subsidizes the Stockholder Exchanges' operations by reducing expenses and improving profit margins—a proposition that OCC disputes—such a subsidy would not affect inter-exchange competition for order flow given the size of the market.[104]

Petitioners counter that moving away from OCC's historical operating model as an industry utility to a for-profit model that makes dividend payments to the Stockholder Exchanges is of obvious competitive significance.[105] Petitioners assert that the Dividend Policy provides an advantage to the Stockholder Exchanges over the Non-Stockholder Exchanges.[106] Given the fierceness and intensity of the competition between the Stockholder Exchanges and Non-Stockholder Exchanges, in Petitioners' view, such an advantage is necessarily significant. Petitioners point to the size of the dividends paid (two cents or less per contract) as compared to OCC's clearing fees (up to a maximum of five cents per contract) to demonstrate the significance of the advantage.[107] And, because they view participation in the Capital Plan as advantageous, Petitioners assert that the fact that only the Stockholder Exchanges were permitted to participate in the Capital Plan is, in and of itself, competitively significant.[108] Moreover, Petitioners state that the structure of the Dividend Policy is such that the more options trades the Non-Stockholder Exchanges generate, the greater the dividends that the Stockholder Exchanges will receive.[109]

At the outset, we find that OCC's effort to narrow the analysis to evidence related to the effect on competition after the Capital Plan was implemented is neither justified nor appropriate. ''Competitive significance'' as used in

[98] Donohue Declaration, para. 22.

[99] OCC October 2017 Post-Remand Submission at 25–26 (internal citations omitted). We note that the Confidential Materials include documentation demonstrating that at least some Board members did raise concerns that the Capital Plan would move OCC away from its original industry utility model, would provide a dividend that was too high given the size of the investment, and/or could put upward pressure on fees going forward.

[100] *Id.* at 25 (internal punctuation omitted).

[101] OCC October 2017 Post-Remand Submission at 19, 26.

[102] *Id.* at 20.

[103] *Id.* at 26; *see also* TABB September 2018 Report at 3 (noting the existence of the ability to request payment of Replenishment Capital and further stating that such a request would likely occur ''as the result of an operational loss at OCC or a period of industry stress'').

[104] OCC October 2017 Post-Remand Submission at 20; *see also* TABB September 2018 Report at 3 (stating that the dollar amount of the dividend is very low relative to the annual revenues of the Stockholder Exchanges).

[105] Petitioners November 2017 Post-Remand Submission at 8–9.

[106] *Id.* Petitioners find support for this contention in OCC's assertion elsewhere in its submissions that the Dividend Policy may benefit end-user customers by causing the Stockholder Exchanges to lower prices. *Id.* at 17.

[107] Petitioners September 2018 Expert Rebuttal at 11 (citing OCC September 2018 Path to Re-Approval at 33); *see also* OCC September 2018 Path to Re-Approval at 33 (stating that a dividend of $30 million used entirely to subsidize Stockholder Exchanges' equity options products would result in fee decreases between 0.939 cents and 2.04 cents at each Exchange). Petitioners argue that such a subsidy would be non-trivial and cite a prior statement by OCC in support of a 2016 fee reduction. Petitioners September 2018 Expert Rebuttal at 11 (citation omitted).

[108] Petitioners November 2017 Post-Remand Submission at 9.

[109] *Id.* at 10; *see also* TABB October 2018 Follow-Up Report at 2 (stating that the Capital Plan seems to foster incentives for OCC to manage its costs in a way that takes into account the related impacts on profits flowing back to OCC's investors).

Article VIIB must be analyzed in the context of both the Commission's approval of Article VIIB, which was put in place to mitigate governance concerns stemming from the exclusion of the Non-Stockholder Exchanges from OCC's governance framework, as well as OCC's obligations under Section 17A of the Exchange Act and Rule 17Ad–22(d)—and now Rule 17Ad–22(e)—thereunder.[110]

Article VIIB was designed to ensure that the Non-Stockholder Exchanges would receive information that was of competitive significance and be provided an opportunity to present their views to the Board (and potentially influence the Board's decision with respect to such information), thereby ensuring that the 2002 By-law Amendment was consistent with Section 17A(b)(3)(C) of the Exchange Act. For Article VIIB to serve this purpose, the Non-Stockholder Exchanges must be afforded the opportunity to present their views to the Board, and potentially influence the Board's decision, *before* any relevant action is taken. A failure to provide that opportunity, if it was required, cannot be rendered meaningless by the later effects of a policy adopted without their *ex ante* participation. It is important to acknowledge, however, that the 2002 By-law Amendment does not place any substantive restrictions on the OCC Board's exercise of its business judgment. The Board is still free to adopt any proposal it believes is consistent with its By-laws, the Exchange Act, and any rules and regulations promulgated thereunder; it, however, must comply with OCC's own rules in doing so.[111]

Moreover, even if such after-the-fact evidence could be relevant to our assessment of compliance with Article VIIB, as we explain in greater detail below, we do not believe that competition among exchanges for order flow is as narrow as OCC contends.[112] Exchanges can compete for order flow through a variety of activities, for example, by offering technological services.[113]

Additionally, we note that the Capital Plan changes the way in which OCC determines, collects, and distributes fees, refunds, and dividends among its participants, the Non-Stockholder Exchanges, and the Stockholder Exchanges. Prior to the Capital Plan, as previously described, OCC returned close to 100% of excess fees collected over annual expenses to its participants, including the Non-Stockholder Exchanges, and no dividends were paid to the Stockholder Exchanges.[114] The Capital Plan altered this model by introducing the concept of annual dividend obligations to the Stockholder Exchanges, which are obtained by reducing the amount of refunds previously afforded to OCC's participants.[115] We believe that this material change in the use of any excess fees that OCC collects could well have been considered competitively significant for OCC, its owners, and its participants (including the Non-Stockholder Exchanges) because those parties now have divergent interests in the generation, collection, and allocation of the excess fees.[116] In particular, the change in the allocation of such funds among the parties could have the potential to alter their competitive positions, especially if—as Petitioners allege—the rate of return provided by the dividend is disproportionate to the investments made by the Stockholder Exchanges.

At this time, we do not take a conclusive position regarding the ultimate competitive impact that this change could have, or has had, on competition among the Stockholder Exchanges and Non-Stockholder Exchanges. But, at a minimum, we believe that the potential for such an effect at the time the Capital Plan was under consideration was relevant to determining whether the Capital Plan was competitively significant. As a result, we cannot conclude that the lack of competitive significance is so obvious as to render a review of the Executive Chairman's determination unnecessary. And, as explained above, because we cannot determine whether the Executive Chairman considered these factors and, if so, what conclusions he drew at the time, we cannot determine whether he abused the discretion afforded him in the By-laws.

4. A Violation of Article VIIB of OCC's By-Laws Would Not Be Harmless

Finally, OCC states that any violation of the By-laws in question would be harmless because Petitioners were given a full and fair opportunity to be heard through the notice and comment process before the Commission and have had ample opportunity to review and share their suggestions on the Capital Plan, including offering suggestions as recently as August 2017.[117]

The Petitioners state that the By-laws mandate that the Non-Stockholder Exchanges have an opportunity to participate in, and potentially shape and influence, matters of competitive significance to OCC's Board before they are decided upon. In their view, the ability to participate in an administrative review process where the outcome is either an approval or disapproval is not an adequate substitute.[118]

For the reasons discussed more fully in Section V.A.1. above setting forth the important substantive protections provided to the Non-Stockholder Exchanges by the By-laws, we do not consider the failure to follow the By-laws in these circumstances to be harmless error. Rather, we recognize that the development process for a proposal such as the Capital Plan can have a significant impact on the final proposal presented to the Board. Thus, it is not sufficient for Petitioners to have been able to raise their concerns as part of the Commission review process only *after* OCC had settled on a final Capital Plan proposal.

[110] Appropriate and clear governance arrangements are a key component of a registered clearing agency's regulatory obligations. *See, e.g.,* 17 CFR 240.17Ad–22(d)(8) and (e)(2); *see also* Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66252 (Nov. 2, 2012) (''Governance arrangements . . . play an important role in making sure that clearing agencies fulfill the Exchange Act requirements that the rules of a clearing agency be designed to protect investors and the public interest and to support the objectives of owners and participants. Similarly, governance arrangements . . . [help] creat[e] an oversight framework that fosters a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement.'').

[111] Release No. 34–46257 (Jul. 25, 2002), 67 FR 49729, 49730 (Jul. 31, 2002) (stating that the non-equity exchanges would become parties to OCC's ''existing Restated Participant Exchange Agreement'' in the same way new participant exchanges have done in the past). Although OCC provides for direct Board membership only by those exchanges that are stockholders, it represented to the Commission that it would provide non-equity exchanges with information of competitive significance and opportunities for the presentation of information to OCC's Board. *Id.* at n. 6.

[112] OCC October 2017 Post-Remand Submission at 19–20 and OCC October 2015 Support Statement at 19–20 (focusing on the price of execution services).

[113] *See* discussion *infra* Section V.B.1.

[114] *See* OCC 2012 Annual Report at 18 (noting that net income before taxes and refunds for fiscal year 2012 was $55,264,907, and the Board determined to return $50.1 million to its members); Petitioners November 2017 Post-Remand Submission at 8–9 (citing to materials that characterize OCC as operating under a ''zero profit'' operating model).

[115] *See* description of Dividend Policy, *supra* Section IV.C.3.

[116] The TABB October 2018 Follow-Up Report concludes that the structure of the Capital Plan affects how OCC considers the generation, collection, and allocation of excess fees, particularly in terms of how profits flow back to the Stockholder Exchanges. *See* TABB October 2018 Follow-Up Report at 2.

[117] OCC October 2017 Post-Remand Submission at 27.

[118] Petitioners November 2017 Post-Remand Submission at 9.

Accordingly, for all of the reasons discussed above, the Commission finds that OCC has failed to meet its burden to show that it followed its own rules in considering and adopting the Capital Plan, as required by Exchange Act Section 19(g)(1).[119] On this basis, we are therefore unable to approve the proposed rule change.

B. The Commission Lacks Sufficient Information To Assess the Impact of the Dividend Policy on the Capital Plan's Consistency With the Exchange Act

We also conclude that OCC failed to meet its burden of establishing that the Capital Plan is consistent with Section 17A(b)(3)(I) of the Exchange Act.[120] Petitioners contend that the Capital Plan's Dividend Policy creates a ''subsidy'' that unfairly advantages the Stockholder Exchanges and therefore burdens competition in a manner neither necessary nor appropriate in furtherance of the purposes of the Act.[121] In the Approval Order, we concluded to the contrary, finding that the dividends under the Plan provided reasonable compensation for the capital commitments made by the Stockholder Exchanges and, as a result, the Plan did not impose ''any costs that could be viewed as imposing a burden on competition not necessary or appropriate under the Exchange Act.'' [122] Our finding that the rate of return the dividend provides to the Stockholder Exchanges was reasonable, however, was based on our reliance on the process used by OCC to arrive at that rate of return.[123] In light of the D.C. Circuit's instruction that such reliance was insufficient and that the Commission may not rely on OCC's process divorced from an examination of the substance of the Plan,[124] we have reexamined our original conclusions.

Upon reconsideration, we conclude that we lack sufficient information to make the necessary findings regarding the Plan's consistency with this provision of the Exchange Act. In particular, we cannot find—as OCC urges—that there has, in fact, been no impact on competition since the Plan has been implemented. Nor do we have sufficient information to find that the dividends under the Plan provide a reasonable rate of return such that they do not unfairly advantage the Stockholder Exchanges.

1. OCC Asserts, but Has Not Established, That There Has Been No Impact on Competition Since Implementation of the Capital Plan

OCC contends that the rate of return provided by the Dividend Policy is only relevant to the extent that the Dividend Policy imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. And because, in OCC's view, there is no evidence that competition has been burdened or diminished as a result of the Dividend Policy, OCC contends that there is no need to analyze the rate of return.[125] In particular, OCC states that there is no evidence of any change in prices for execution or exchange services, the introduction of new services by the Stockholder Exchanges as a result of the dividends they receive, or an alteration to the competitive behavior of the options exchanges, and therefore there is no need for a more detailed examination of whether the rate of return is reasonable.[126] OCC also again states that as between the Stockholder Exchanges and Non-Stockholder Exchanges, the primary competition is with respect to order flow through options execution services, and that the dividends are insignificant when compared to the multi-billion-dollar market for options execution services.[127]

Petitioners, in contrast, state that the D.C. Circuit found that the reasonableness of the dividend rate is a central issue, and that to the extent the dividend rate is unreasonable, it creates a windfall to the Stockholder Exchanges that may inappropriately or unnecessarily burden competition.[128] Petitioners further state that their submissions demonstrate that the dividends are, in fact, a burden on competition.[129]

The Commission agrees with OCC that the reasonableness of the rate of return provided by the Dividend Policy is relevant only insofar as it affects the analysis of the consistency of the Plan with the Exchange Act. But we do not believe that this obviates the need to assess the reasonableness of the rate of return. As explained further below, OCC has asserted, but not established, that implementation of the Dividend Policy has had no effect on competition. Nor do we have sufficient information to independently determine whether or to what extent competition has, in fact, been affected. We therefore believe that examination of the reasonableness of the rate of return is appropriate.

In arguing that there is no evidence of an effect on competition, OCC asserts that (i) the only conceivably affected competition here is among exchanges; (ii) the competition among exchanges is principally for order flow; and (iii) there is no basis to expect that competition among exchanges for order flow has been or could be diminished because of the Capital Plan.[130]

Even accepting OCC's arguments that the only conceivably affected competition here is among exchanges and that the competition among exchanges is principally for order flow, we do not agree with OCC's assertion that it has conclusively shown that such competition has not been affected by the Capital Plan.[131] We therefore find that OCC has not established that competition has not been burdened. OCC itself concedes that the competitive balance among the options exchanges is dependent upon a multitude of sources, and that both Stockholder and Non-Stockholder Exchanges compete for order flow through a variety of activities.[132] For example, exchanges can compete on the quality of their trade execution services by offering technological services to their market participants to enhance the trading process. Further, there are numerous ways that competition among the exchanges could be affected that would not necessarily manifest directly as immediately observable competitive behavior. For example, the Dividend Policy could allow the Stockholder Exchanges to lower the cost of executing options transactions on their exchanges (for example, by investing the dividend payments in more efficient order matching systems and trade processing systems), potentially gaining a competitive advantage over, and attracting options order flow from, the Non-Stockholder Exchanges. The Stockholder Exchanges also could use the dividends to defray the costs of new product listings, which, if successful, could attract options order flow from the Non-Stockholder Exchanges. And, while these forms of competition could be affected by any subsidy provided to the Stockholder Exchanges through the

[119] 15 U.S.C. 78s(g)(1).

[120] 15 U.S.C. 78q–1(b)(3)(I).

[121] *See, e.g.,* Petitioners September 2018 Expert Rebuttal at 11.

[122] Approval Order at 8301.

[123] *See, e.g., id.* at 8300–8301.

[124] *Susquehanna,* 866 F.3d at 447–448.

[125] OCC December 2017 Reply at 5.

[126] *Id.* at 6–7.

[127] OCC October 2017 Post-Remand Submission at 21.

[128] Petitioners January 2018 Surreply at 4.

[129] *Id.* at 5.

[130] OCC October 2017 Post-Remand Submission at 19. In its Reply, OCC offered additional details that it believes support a conclusion that ''competition for order flow has not been affected in the slightest.'' OCC December 2017 Reply at 6–7.

[131] OCC December 2017 Reply at 6–7.

[132] OCC October 2015 Support Statement at 19–20.

Dividend Policy, we lack sufficient information to determine if there has been a change in these markets attributable to the Capital Plan.

Because we cannot determine whether the Plan has had an effect on these aspects of competition, we cannot agree with OCC that it has shown an absence of a burden on competition that would obviate the need to assess the reasonableness of the rate of return generated by the Plan's Dividend Policy and its effect on competition.

2. We Do Not Have Sufficient Information To Assess the Reasonableness of the Rate of Return Provided by the Dividend Policy

In asserting that the rate of return is reasonable, OCC states that an Ad Hoc Strategic Advisory Group (''Advisory Group'') of OCC directors ''negotiated an after-tax dividend that it concluded was fair and reasonable consideration for the Stockholder Exchanges' capital outlays and commitments for additional capital outlays.'' [133] Specifically, in an affidavit submitted with its post-remand submission, OCC's Executive Chairman declared: OCC planned ''to calculate the dividend each year by first providing clearing members with a refund of 50% of OCC's earnings before tax and then issuing the after-tax amount of the remainder as a dividend to the Stockholder Exchanges'' and the ''Stockholder Exchanges represented to OCC that they required payment of the dividend . . . as an incentive to participate in the Plan.'' [134] OCC states that the amount of dividends is reasonable because the dividends are necessary to compensate the Stockholder Exchanges for the Capital Contribution and Replenishment Capital Agreement.[135] OCC also states that its Board, with the assistance of Oliver Wyman, Inc. and Barclays Capital, Inc. (''Barclays''), reviewed the risks to the Stockholder Exchanges' Capital Contribution and Replenishment Capital Agreement and concluded that the dividends were reasonable compensation for those risks.[136]

Petitioners state that the OCC October 2017 Post-Remand Submission fails to address the substantive reasonableness of the rate of return provided by the Plan's dividend provisions and instead relies on the process that produced the Dividend Policy.[137] Petitioners suggest that this process was flawed because OCC kept the Non-Stockholder Exchanges out of the deliberations and because the Stockholder Exchanges appear to have used their veto power to obtain unreasonable concessions from OCC.[138]

Petitioners also state that OCC has failed to demonstrate why it is reasonable to allocate roughly half of unused fees to dividends, as opposed to using a set percentage or a formula other than a fixed proportion of unused fees.[139] Petitioners state that the resulting rate of dividends is unreasonably high, comparing OCC's recent dividends rates of 13.3% and 17.1% to the recent yield on Ten Year United States Treasuries (which has the same debt rating as OCC), of approximately 2.37%.[140] Petitioners suggest that Barclays, in a presentation dated December 5, 2014, found that other capital raising transactions had lower rates of return that averaged 5.98%, and, further, that Barclays' analysis of an internal rate of return to the Stockholder Exchanges was flawed.[141]

Finally, Petitioners state that OCC failed to consider cheaper alternatives, such as an offer by one of the Stockholder Exchanges to provide OCC with capital at an 8% to 9% annual rate of return, setting the dividend at a predefined percentage rather than half of all excess fees,[142] or obtaining the required amount of capital by retaining earnings.[143] In its response to Petitioners, OCC relies on statements by Barclays that the terms of the Capital Plan ''provide a 'reasonable IRR on contributed capital' and that returns would be 'effectively capped.' '' [144]

In our view, although OCC states that the dividend rate is reasonable, OCC failed to provide sufficient information to support this conclusion. Rather, OCC submitted, pursuant to a request for confidential treatment, a variety of materials prepared by third-party consultants that OCC's Board considered in crafting and ultimately approving the Capital Plan.[145] These materials largely consist of PowerPoint presentations prepared by these third-party consultants without narratives or explanations of key assumptions. OCC does not address all of the potential errors in these calculations alleged by Petitioners, or itself explain any of the assumptions used by the consultants in deriving their estimates.

For example, OCC does not explain anywhere why a pretax 50% division between refunds and dividends is appropriate.[146] While OCC indicates that the 50% split between fees (before taxes) and dividends (after taxes), was arrived at through a negotiation process by the Advisory Group,[147] it fails to provide any relevant substantive details regarding that negotiation process, nor does OCC provide any information or explanation as to why that particular split was chosen or why this division is consistent with the Exchange Act. Nor does OCC provide support for the disparity in treatment between dividends and refunds when replenishment capital has been outstanding for twenty-four months.[148]

[133] OCC October 2017 Post-Remand Submission at 8. The members of the Advisory Group were all directors of OCC: Three clearing member directors, two management directors, two exchange directors, and two public directors. Donohue Declaration at par. 5. Craig S. Donohue, Executive Chairman and Chief Executive Officer of OCC, was one of the management directors. *Id.,* para. 3.

[134] *Id.,* paras. 17, 18.

[135] OCC October 2017 Post-Remand Submission at 18. *See also* TABB September 2018 Report at 3 (noting the existence of the ability to request payment of Replenishment Capital and further stating that such a request would likely occur ''as the result of an operational loss at OCC or a period of industry stress'').

[136] OCC October 2017 Post-Remand Submission at 20–21. OCC, however, does not explain what factors made the dividend rates reasonable, nor does it address the potential errors in the calculations that Petitioners describe. *See infra* note 141 and accompanying text.

[137] Petitioners November 2017 Post-Remand Submission at 11–12.

[138] *Id.* at 1.

[139] *Id.* at 3.

[140] *Id.* at 4.

[141] *Id.* at 14. According to Petitioners, the analysis was incorrect because it assumed that the Stockholder Exchanges would contribute $222 million, instead of the $150 million that they actually contributed, and deducted the taxes that the Stockholder Exchanges were expected to pay on the dividends. Petitioners state that applying the yearly dividends Barclays assumed OCC would pay to the $150 million Capital Contribution yields a dividend rate ranging from 16.67% to 19.93%, which is significantly higher than the internal rates of return estimated in Barclays' presentation for the Stockholder Exchanges, which were 11.7% to 13.7%. *Id.* at 12–14.

[142] Petitioners note that Petitioner SIG has offered to provide OCC $150 million in capital at the rate of LIBOR + 3%. Petitioners November 2017 Post-Remand Submission at 15; Letter from David M. Pollard, Head of Strategic Planning and Special Counsel, Susquehanna Int'l Grp. to OCC Board of Directors (Aug. 25, 2017). On August 24, 2018, Petitioner SIG notified the Commission that it had amended this offer to $150 million at the Federal Funds Rate. SIG August 2018 Post-Remand Letter at 1.

[143] Petitioners November 2017 Post-Remand Submission at 14–15. *See also* TABB October 2018 Follow-Up Report at 2–3 (discussing potential alternatives not pursued by OCC).

[144] OCC December 2017 Reply at 4.

[145] *See supra* note 26.

[146] *Susquehanna,* 866 F.3d at 447–48.

[147] *See* OCC October 2017 Post-Remand Submission at 8.

[148] As noted above in Section IV(C)(2) and (3), the Refund Policy under the Capital Plan specifies that OCC will not resume paying refunds and will recalculate how refunds are made if, for more than twenty-four months: (i) Replenishment Capital remains outstanding, or (ii) the Target Capital Requirement is not restored; however OCC *would* resume dividends after the Replenishment Capital is repaid in full and the Target Capital Requirement

As the D.C. Circuit made clear, trusting the process is insufficient.[149] Without information sufficient to determine why a pretax 50% division between refunds and dividends and disparate treatment of refunds and dividends in the event replenishment capital has been outstanding for twenty-four months is appropriate, the Commission is unable to make determinations as to the reasonableness of the dividend rate and its consistency with the Act.[150]

Nor does the AlixPartners August 2018 Report, submitted by OCC, provide sufficient information to justify the expected rate of return. That report assesses the expected rate of return at the time the Capital Plan was being considered, concluding that the ''expected returns to the Stockholder Exchanges for their investment in OCC and the Replenishment Capital Commitment under the Capital Plan fall within a range of returns that is reasonable for this investment and commitment.'' [151] More specifically, it concludes that the present value of the Stockholder Exchanges' expected returns at the time they agreed to make their $150 million investment in OCC were between $128.6 million and $137.8 million. The report therefore concludes that the Stockholder Exchanges were not expected to receive outsized compensation given the risk of their investment in OCC, and thus the expected rate of return was not unreasonable.[152]

The AlixPartners August 2018 Report, however, has a number of deficiencies that preclude the Commission from relying on it as a basis to conclude that the dividend rate is reasonable and therefore that the Dividend Policy is consistent with the Exchange Act. As an initial matter, the report relies on a report [153] produced by Barclays—including that report's estimate of dividends—as a basis of its analysis.[154] It does not, however, provide any additional information as to the basis of those assumptions.[155]

Moreover, the AlixPartners August 2018 Report focuses on assessing the estimated rate of return at the time OCC's Board voted to adopt the Capital Plan. But, as the report itself acknowledges, the dividends actually paid by OCC in 2016 and 2017 exceed those estimates.[156] Other than noting the higher-than-estimated payments, the report does not provide any analysis of, or information regarding, the rate of return provided by the dividends actually paid. And, regardless of the reasonableness of OCC's past predictions, without such analysis or information of the rate of return provided by the dividends actually paid, we cannot assess whether the Capital Plan has proven to inappropriately or unnecessarily burden competition.[157] In justifying its focus on what it terms this ''*ex ante*'' analysis, the second report provided by AlixPartners in October notes that the Board's approval of the Plan was based on these same predictive judgments.[158] But in determining whether the Plan is consistent with Section 17A(b)(3)(I), we are not assessing the reasonableness of the Board's judgment at the time; [159] rather, that provision requires us to ensure that OCC's rules themselves—including the Capital Plan—''do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [160] And the effect of that Plan since its implementation in 2015 is relevant to that determination.[161]

The AlixPartners August 2018 Report also argues that the Stockholder Exchanges' investment in OCC is comparable to a private equity investment and cites an April 2015 paper based on a survey of private equity investors, which reports that private equity investors typically target a 22% internal rate of return on their investments on average (with a vast majority of target rates of return between 20% and 25%).[162] However, the Commission is not persuaded by this comparison because the April 2015 paper also suggests that private equity investors select investments with significant potential for growth,[163] which presumably are risky investments. Indeed, the historical distribution of returns on private equity funds presented in the Easton September 2018 Rebuttal Report indicate that private equity investments are risky investments.[164] These characteristics appear to contradict AlixPartners' own characterization of OCC as a non-profit-maximizing firm with low growth prospects and presumably low risk.[165]

Further, there are a number of other apparent deficiencies in the AlixPartners August 2018 Report, including areas where the report fails to provide an appropriate analysis or justification for key assumptions. For example, although the AlixPartners August 2018 Report states that it uses the Capital Asset Pricing Model

is restored through the accumulation of retained earnings, even if the time of repayment exceeds twenty-four months.

[149] *See Susquehanna,* 866 F.3d at 447–48 (''Trust the process' may be a reasonable slogan for the hometown basketball team of lead petitioner Susquehanna International Group. But the process alone cannot justify the dividend rate in this case.'') (internal citation omitted); *see also id.* at 448 (''More fundamentally, the SEC cannot rely on OCC's process totally divorced from any examination of the substance of the Plan . . . .'').

[150] In addition, while we do not reach the issue of the effect of the Capital Plan on fees in this order, we note that such further information regarding the reasonableness of the split and the disparity in treatment between dividends and refunds when replenishment capital has been outstanding for twenty-four months would be necessary to assess the reasonableness of the Capital Plan's effect on fees as well. 17 CFR 240.17Ad–22(e)(15).

[151] AlixPartners August 2018 Report at 5, 7, 18.

[152] *Id.* at 18.

[153] *Id.* at 8 (''Barclays prepared several presentations for the Advisory Group, which ultimately resulted in a presentation to the OCC Board entitled ''Project Optimal: Capital Plan Discussion Materials,'' dated December 18, 2014 (the ''Barclays Final Presentation'').'').

[154] *Id.* at 8, n.27.

[155] Petitioners also noted the lack of any such information. *See* Petitioners September 2018 Expert Rebuttal at 9. Petitioners also stated that they did not have access to the specific Barclays report upon which the AlixPartners August 2018 Report was based. *Id.*

[156] AlixPartners August 2018 Report at 15, n.46. *See also* AlixPartners October 2018 Reply at 6, n.18 (''Moreover, I focused on expectations at the time of the adoption of the Capital Plan rather than any *ex post* realization.'').

[157] Barclays estimated (and the AlixPartners August 2018 Report accepted) dividend payments of $25.5 million, $25 million, and $25.6 million in 2015, 2016, and 2017, respectively. The dividends actually paid in those years were $19.7 million, $25.6 million, and $32.5 million, respectively. While the cumulative totals of the estimates and the actual payments are close, the difference between the relatively flat trend predicted and the actual trend of sharp increases is clear, and could be relevant to our analysis.

[158] AlixPartners October 2018 Reply at 9.

[159] In this respect, our analysis under Section 17A(b)(3)(I) differs from that under Section 19(g). As discussed above, by its terms, Section 19(g) requires us to ensure that OCC complies with its own rules, procedural and otherwise. As relevant here, that includes an assessment of whether the Board complied with Article VIIB in developing the Capital Plan. *See supra* 22.

[160] 15 U.S.C. 78q–1(b)(3)(I).

[161] We also note the tension between OCC's assertion here that the integrity of the Board's approval process obviates the need for the Commission to examine the effect of the Plan since implementation and its contention elsewhere (*see supra* Section V.B.1) that the effects of the Plan since implementation obviate the need to examine the Board's decision making process.

[162] AlixPartners August 2018 Report at 8.

[163] Gompers, Paul, Steven N. Kaplan, Vladimir Mukharlyamov, ''What Do Private Equity Firms Say They Do?'' *Harvard Business School,* Working Paper 15–081, April 15, 2015, at 27, *https://www.hbs.edu/faculty/Publication%20Files/15-081_9baffe73-8ec2-404f-9d62-ee0d825ca5b5.pdf* (last visited February 12, 2019). *See also* AlixPartners October 2018 Reply at 7 (clarifying that the private equity investments in the sample were primarily buyout and growth equity investors) (citing Gompers, Paul, Steven N. Kaplan, Vladimir Mukharlyamov, ''What Do Private Equity Firms Say They Do?'' *Harvard Business School,* Working Paper 15–081, April 15, 2015, at 11).

[164] Easton September 2018 Rebuttal Report at 10–11.

[165] AlixPartners August 2018 Report at 13.

(''CAPM'') formula [166] to calculate OCC's cost of equity, it appears that the report uses a different formula that features elements of the CAPM formula (risk-free rate of return; beta, a measure of an investment's systematic risk; and market return) as well as elements not in the CAPM formula (a risk premium associated with small stocks and a risk premium associated with an investment's unsystematic risk).[167] It is therefore unclear what OCC's cost of equity would have been had the CAPM formula actually been used for the calculation.[168] Further, even if the Commission were to assume that the formula in the AlixPartners August 2018 Report is a reasonable approach to estimate the cost of equity, because the report does not provide a value for the risk premium associated with unsystematic risk, the Commission would not be able to reproduce the cost of equity of 14% stated in the report.[169]

As another example, the Commission has concerns regarding the manner in which the AlixPartners August 2018 Report estimates a beta of 0.85, which the report uses in calculating OCC's cost of equity. Although the AlixPartners August 2018 Report purports to calculate a beta of 0.85 by averaging the beta of four ''guideline companies'' that the AlixPartners August 2018 Report contends have similar risk and return profiles as OCC, the report does not actually explain how the average beta of 0.85 was calculated. Specifically, it is unclear whether the AlixPartners August 2018 Report actually makes the necessary adjustments in the calculations to account for differences in financial leverage between OCC and the chosen guideline companies, nor does the AlixPartners August 2018 Report provide the inputs that readers of the report would need to make the adjustments themselves.[170] The Commission therefore does not believe that it can rely on the AlixPartners August 2018 Report in determining the reasonableness of the rate of return provided by the Dividend Policy.

Nor does the Commission believe that it can rely on the alternative assessment of the rate of return provided by Petitioners in the Easton September 2018 Rebuttal Report. Among other things, the Easton September 2018 Rebuttal Report concluded that the Stockholder Exchanges' investment in OCC is exceptionally low risk. In Professor Easton's view, the return and expected return on the Stockholder Exchanges' investment in OCC is not commensurate with the low risk nature of the investment. Rather, based on a number of indicia, he concludes that a reasonable rate of return is near five percent.[171] But the Commission for the reasons discussed below is not persuaded by the argument that the investment made by the Stockholder Exchanges is an exceptionally low risk investment.[172]

First, the Easton September 2018 Rebuttal Report compares the common stock investment made by the Stockholder Exchanges to the Series C Preferred Stock issued by the Depository Trust and Clearing Corporation. This comparison is problematic because preferred stock has a claim to a firm's cash flows that is more senior than that of common stock and thus preferred stock is generally less risky than common stock.[173] Second, the Easton September 2018 Rebuttal Report compares the common stock investment made by the Stockholder Exchanges to the debt securities that OCC might issue. This comparison is also problematic because debt securities have a claim to a firm's cash flows that is more senior than that of either preferred stock or common stock, and thus debt securities are generally less risky than preferred stock or common stock.[174]

The Commission acknowledges the diversity of views presented in the reports, but believes that it cannot rely on the analysis of either report because of the concerns described above. Significantly, as noted above, the AlixPartners August 2018 Report is based on the Barclays report,[175] and the Easton September 2018 Rebuttal Report is limited by the scope of the AlixPartners August 2018 Report.[176] As a consequence, neither report addresses the information that is necessary for the Commission to evaluate the reasonableness of the rate of return, including an analysis of the rate of return provided by the dividends actually paid under the Plan or a justification of a dividend tied to a 50% split between fees and refunds. We therefore cannot determine whether the Dividend Policy, or the Plan as a whole, unnecessarily or inappropriately burdens competition.

Accordingly, for the foregoing reasons, we find that OCC has failed to meet its burden of demonstrating that

[166] *See* William F. Sharpe, ''Capital Asset Prices: A Theory of Market Equilibrium under Conditions of Risk.'' The Journal of Finance 19(3) (1964), pp. 425–442; John Lintner, ''The Valuation of Risk Assets and the Selection of Risky Investments in Stock Portfolios and Capital Budgets.'' Review of Economics and Statistics. 47(1), pp. 13–37; and Eugene F. Fama and Kenneth K. French, ''The Capital Asset Pricing Model: Theory and Evidence.'' Journal of Economic Perspectives, 18(3), pp. 25–46.

[167] AlixPartners August 2018 Report at 9.

[168] We also note that Petitioners question whether the CAPM is an appropriate approach for calculating a cost of capital for the Shareholder Exchanges' equity investment in OCC. As a theoretical economic model, the CAPM assumes, among other things, that investors hold diversified portfolios. Petitioners note that this assumption is unlikely to hold in OCC's case because the Shareholder Exchanges primarily invest in assets and activities associated with the trading of securities, and thus their portfolios are by no means diversified. *See* Easton September 2018 Rebuttal Report at 11–12. In response, OCC asserts in the AlixPartners August 2018 Report that this argument undermines Petitioners' ''contention about the low-risk nature of the investment'' because ''if the investor is unable to diversify away the unsystematic risk and is holding both systematic and unsystematic risk, the investment is riskier.'' Thus, according to OCC, ''by using only the CAPM to calculate the cost of equity for an investor that is undiversified, the cost of equity will be understated.'' *See* AlixPartners October 2018 Reply at 7–8.

[169] AlixPartners August 2018 Report at 11.

[170] One approach to adjusting for differences in financial leverage between the guideline companies and OCC is to remove the effect of financial leverage from each guideline company's beta by dividing that beta by $(1+(1-t)\times DE)$, where t and DE are respectively, the tax rate and debt-to-equity ratio of the guideline company. The resulting adjusted betas of the guideline companies are then averaged to produce an average beta that does not exhibit financial leverage effects associated with guideline companies. The beta of OCC is calculated by multiplying the average beta by $(1+(1-t_{OCC})\times DE_{OCC})$, where t_{OCC} and DE_{OCC} are respectively, the tax rate and debt-to-equity ratio of OCC. *See* Robert S. Hamada, ''The Effect of the Firm's Capital Structure on the Systematic Risk of Common Stocks.'' The Journal of Finance 27(2) (1972): 435–452; Robert G. Bowman and Susan R. Bush, ''Using Comparable Companies to Estimate the Betas of Private Companies,'' Journal of Applied Finance 16(2) (2006): 71–81.

In addition, in adjusting the present value of the Stockholder Exchanges' expected dividends for the lack of marketability, the AlixPartners August 2018 Report reviews various studies that quantify the appropriate level of discount to be applied to equity investments that lack marketability. These studies provide different ranges of discounts: 13% to 45%, 13% to 68%, 27% to 68%, and 35% to 50%. The AlixPartners August 2018 Report then uses a lower discount of 25% and an upper discount of 30%, but other than stating that these discounts are conservative, the report does not explain or provide a justification as to why that range is appropriate here. *See* AlixPartners August 2018 Report at 13–15.

[171] Easton September 2018 Rebuttal Report at 16.

[172] Easton September 2018 Rebuttal Report at 6.

[173] The riskiness of a preferred stock can be further reduced if it is cumulative, *i.e.,* any preferred stock dividend payments that have been missed in the past must be paid out to the preferred stockholders before the issuer can pay dividends to its common stockholders. *See also* AlixPartners October 2018 Reply at 4 (''preferred stock is different from common stock in that it typically has a higher priority in the capital structure'').

[174] The riskiness of a debt security can be further reduced by adding provisions to the debt agreement such as the pledging of collateral, provision of third-party credit guarantee, and incorporation of restrictive covenants to ensure that the debt security issuer preserves sufficient cash flows to meet interest payments and principal repayment. *See also* AlixPartners October 2018 Reply at 2 (''Debtholders have a priority claim (above that of equity holders) to the company's assets if the company defaults.'').

[175] AlixPartners August 2018 Report at 8, n.27

[176] Easton September 2018 Rebuttal Report at 4.

the Plan is consistent with Section 17A(b)(3)(I) of the Exchange Act.[177] On this independent basis, we are unable to approve the proposed rule change.

VI. Consideration of Potential Request for Relief

The Commission recognizes that, in operating under the Capital Plan since 2015, OCC has acted in reliance on the Commission's previous approval of the Plan. But, for the reasons discussed above, the Commission is now unable to find that the Capital Plan is consistent with the Exchange Act, and the proposed rule change is therefore disapproved.

As a result of the Commission's disapproval of the proposed rule change today, OCC is out of compliance with Rule 17Ad–22(e)(15). Accordingly, OCC will be required to submit to the Commission a new or amended version of a capital plan in order to comply with Rule 17Ad–22(e)(15).[178]

While OCC has represented that it is possible to unwind the Capital Plan,[179] the Commission acknowledges that Petitioners argued and the D.C. Circuit recognized that unwinding and replacing the Capital Plan may pose considerable logistical challenges for OCC.[180] The Commission will consider any requests for exemptive or other relief that OCC might seek while OCC establishes a new capital plan and seeks to come into compliance with Rule 17Ad–22(e)(15).[181] The Commission does not currently have sufficient information to understand what, if any, specific challenges OCC may face, and if any regulatory relief may be necessary, or, if so, to appropriately tailor such relief. The Commission would expect any such potential request for relief by OCC to include information sufficient for the Commission to determine whether the requested relief is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission expects that any such request from OCC would likely need to include a detailed explanation of (i) the relief being sought, (ii) why the requested relief is necessary, (iii) the time period for which OCC is seeking relief and an explanation of its appropriateness, and (iv) any limitations or conditions that OCC believes would be appropriate to impose in connection with the requested relief.

VII. Conclusion

It is hereby ordered that SR–OCC–2015–02 is hereby disapproved pursuant to section 19(b)(2) of the Exchange Act;

It is further ordered that, in accordance with Section 23(a)(3) of the Exchange Act, the information for which OCC requested confidential treatment will not be kept in a public file because that information is confidential commercial and financial information that could be withheld from the public under FOIA Exemption 4, 5 U.S.C. 552(b)(4).

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

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[177] 15 U.S.C. 78q–1(b)(3)(I).

[178] 17 CFR 240.17Ad–22(e)(15). This order does not preclude OCC from revising the Capital Plan in the form of a new proposed rule change submission or submitting a completely new proposal to set a capital target and raise capital that is in compliance with OCC's own rules and consistent with the Exchange Act and applicable regulations.

Additionally, OCC will need to submit to the Commission some iteration of a capital plan in order to comply with its obligations under Section 19(b) of the Exchange Act and Rule 19b–4 thereunder. 15 U.S.C. 78s; 17 CFR 240.19b–4.

[179] *Susquehanna,* 866 F.3d at 451 (''OCC assure[s] us that it will be possible to unwind the Plan at a later time'') (citing Oral Argument Transcript at 33–34, containing OCC statements at oral argument); OCC Opposition to Stay (D.C. Circuit Feb. 22, 2016) at 9 (arguing that Petitioners have failed to show any irreparable harm in the absence of a stay).

[180] *Susquehanna,* 866 F.3d at 451; *see also* Petitioners September 2018 Expert Rebuttal at 13 (discussing alternatives to the current Capital Plan as well as potential Commission relief to manage consequences). *See, e.g.,* OCC September 2018 Path to Re-Approval at 51–52; TABB September 2018 Report at 4–5; *see also* Opposition of the Securities and Exchange Commission to Petitioners' Emergency Motion for Stay at 3, *Susquehanna Int'l Grp., LLP* v. *SEC,* Case No. 16–1061 (D.C. Cir.).

[181] Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class of classes of persons, securities, or transaction, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85125; File No. SR–Phlx–2019–01]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

February 13, 2019.

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 February 1, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its Pricing Schedule at Options 7, Section 6, Part D to amend the Phlx Options Regulatory Fee or ''ORF.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Phlx assesses an ORF of $0.0045 per contract side. The Exchange proposes to increase this ORF to $0.0050 per contract side as of February 1, 2019. In light of recent market volumes, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange. The proposal would allow the Exchange to increase the per contract amount of ORF in order to offset the Exchange anticipated regulatory costs. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated regulatory costs. The Exchange also proposes to delete obsolete language in the rule text as described herein.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Collection of ORF

Currently, Phlx assesses its ORF for each customer option transaction that is either: (1) Executed by a member on Phlx; or (2) cleared by a Phlx member at The Options Clearing Corporation (''OCC'') in the customer range,[3] even if the transaction was executed by a non-member of Phlx, regardless of the exchange on which the transaction occurs.[4] If the OCC clearing member is a Phlx member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [5]); and (2) if the OCC clearing member is not a Phlx member, ORF is collected only on the cleared customer contracts executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a Phlx member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by Phlx from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than Phlx, it was cleared by a Phlx member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between Phlx and the transaction. If Broker A was not a Phlx member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on Phlx nor was it cleared by a Phlx member.

In the case where a member both executes a transaction and clears the transaction, the ORF is assessed to and collected from that member. In the case where a member executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the member who clears the transaction and not the member who executes the transaction. In the case where a non-member executes a transaction at an away market and a member clears the transaction, the ORF is assessed to and collected from the member who clears the transaction. In the case where a member executes a transaction on Phlx and a non-member clears the transaction, the ORF is assessed to the member that executed the transaction on Phlx and collected from the non-member who cleared the transaction. In the case where a member executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the member who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Proposal

The Exchange is proposing to increase the ORF from $0.0045 to $0.0050 per contract side as of February 1, 2019. In light of recent market volumes, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange. The proposal would allow the Exchange to increase the per contract amount of ORF in order to offset the Exchange anticipated regulatory costs. The Exchange proposes to add the following rule text to Options 7, Section 6, Part D, ''Phlx will assess an Options Regulatory Fee of $0.0050 per contract side as of February 1, 2019.''

The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified members via an Options Trader Alert of the proposed change to the ORF thirty (30) calendar days prior to the proposed operative date, February 1, 2019.[6] The Exchange believes that the prior notification market participants will ensure market participants are prepared to configure their systems to account properly for the ORF.

Finally, the Exchange proposes to remove the following rule text from Options 7, Section 6, Part D, ''$0.0045 per contract side''. This text is obsolete as it references a prior ORF rate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [8] 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 its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0045 to $0.0050 per contract side as of February 1, 2019 is reasonable because with this increase, the Exchange would recoup additional regulatory revenue to offset anticipated regulatory costs. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs.

The Exchange believes that increasing the ORF from $0.0045 to $0.0050 per contract side as of February 1, 2019 is equitable and not unfairly discriminatory because assessing the ORF to each member for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by a Phlx member is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. OCC collects the ORF

[3] Participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] The Exchange uses reports from OCC when assessing and collecting the ORF.

[5] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[6] *See* Options Trader Alert #2018–46.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

on behalf of Phlx from Exchange clearing members for all customer transactions they clear or from non-members for all customer transactions they clear that were executed on Phlx. The Exchange believes the ORF ensures fairness by assessing fees to members based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2019–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2019–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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 No. SR–Phlx–2019–01, and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02730 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85127; File No. SR–MRX–2019–03]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt an Options Regulatory Fee

February 13, 2019.

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 February 1, 2019, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 7, Section 5 to adopt an Options Regulatory Fee or ''ORF''.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend its rules at Options 7, Section 5 to adopt an ORF. Specifically, MRX proposes to adopt an ORF of $0.0004 per contract side as of February 1, 2019 at Options 7, Section 5, A. The Exchange proposes to re-letter current ''A'' (FINRA Web CRD Fees) as ''B.'' MRX has been operating since 2016. Initially MRX did not adopt an ORF as it was a new market. MRX proposes to adopt an ORF at this time. The Exchange's proposed ORF should balance the Exchange's regulatory revenue against the anticipated regulatory costs.

Collection of ORF

MRX would assess the proposed ORF for each customer option transaction that is either: (1) Executed by a Member on MRX; or (2) cleared by a MRX Member at The Options Clearing Corporation (''OCC'') in the customer range,[3] even if the transaction was executed by a non-member of MRX, regardless of the exchange on which the transaction occurs.[4] If the OCC Clearing Member is an MRX Member, ORF would be assessed and collected on all cleared customer contracts (after adjustment for CMTA)[5]; and (2) if the OCC Clearing Member is not a MRX Member, ORF is collected only on the cleared customer contracts executed at MRX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, an MRX Member, routed a customer order to Cboe Exchange, Inc. (''CBOE'') and the transaction executed on CBOE and cleared in Broker A's OCC Clearing account, ORF would be collected by MRX from Broker A's clearing account at OCC via direct debit. While in this example the transaction was executed on a market other than MRX, it was cleared by an MRX Member in the member's OCC clearing account in the customer range, therefore there would be a regulatory nexus between MRX and the transaction. If Broker A was not an MRX Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on MRX nor was it cleared by an MRX Member.

In the case where a Member both executed a transaction and cleared the transaction, the ORF would be assessed to and collected from that Member. In the case where a Member executed a transaction and a different Member cleared the transaction, the ORF would be assessed to and collected from the Member who cleared the transaction and not the Member who executed the transaction. In the case where a non-member executed a transaction at an away market and a Member cleared the transaction, the ORF would be assessed to and collected from the Member who cleared the transaction. In the case where a Member executed a transaction on MRX and a non-member cleared the transaction, the ORF would be assessed to the Member that executed the transaction on MRX and collected from the non-member who cleared the transaction. In the case where a Member executed a transaction at an away market and a non-Member cleared the transaction, the ORF would not assessed to the Member who executed the transaction or collected from the non-member who cleared the transaction because the Exchange would not have access to the data to make absolutely certain that ORF should apply. Further, the data would not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, would not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange would review all costs and make determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter would offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, would cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, would not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission.

The Exchange notified Members via an Options Trader Alert of the proposed change to the ORF thirty (30) calendar days prior to the proposed operative date, February 1, 2019.[6] The Exchange believes that the prior notification will ensure Members are prepared to configure their systems to properly account for the ORF.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[8] 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 its facility and is not designed to permit unfair

[3] Members must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Members mark orders with the correct account origin code.

[4] The Exchange would use reports from OCC when assessing and collecting the ORF.

[5] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[6] *See* Options Trader Alert #2018–46.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adopting an ORF of $0.0004 per contract side as of February 1, 2019 is reasonable because the Exchange's collection of ORF would be balanced against the amount of regulatory costs incurred by the Exchange. Specifically, the ORF would balance the Exchange's regulatory revenue against the anticipated regulatory costs. The Exchange notes that other options markets have adopted an ORF.[9]

The Exchange believes that adopting an ORF of $0.0004 per contract side as of February 1, 2019 is equitable and not unfairly discriminatory because assessing the ORF to each Member for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by an MRX Member would be an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The ORF would be collected by OCC on behalf of MRX from Exchange clearing members for all customer transactions they clear or from non-members for all customer transactions they clear that were executed on MRX. The Exchange believes the ORF would ensure fairness by assessing fees to Members based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program.

The ORF would be designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, would not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, would be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF would apply to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It would also supplement the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, would not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MRX–2019–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–MRX–2019–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 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 No. SR–MRX–2019–03, and should be submitted on or before March 13, 2019.

[9] CBOE, Nasdaq Phlx LLC, The Nasdaq Options Market LLC, Nasdaq ISE, LLC, BOX Exchange LLC and Miami International Securities Exchange LLC are examples of options markets that have adopted an ORF.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02740 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85116; File No. SR–CboeEDGA–2019–002]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the EDGA Fee Schedule as It Relates to Pricing for the Use of Certain Routing Strategies

February 13, 2019.

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 February 1, 2019, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the EDGA fee schedule as it relates to pricing for the use of certain routing strategies. The text of the proposed rule change is attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the EDGA fee schedule to change the pricing applicable to orders routed using the ROUC routing strategy in connection with planned changes to the System routing table.[3] ROUC is a routing strategy offered by the Exchange that is used to target certain low cost protected market centers by routing to those venues after accessing available liquidity on the EDGA Book and certain non-exchange destinations, and prior to routing to other trading centers included in the System routing table and posting to the Cboe EDGX Exchange, Inc. (''EDGX'') order book, if possible. The Exchange periodically changes the low cost venues targeted by the ROUC routing strategy to ensure that the venues prioritized for routing can be accessed at a low cost. Currently, three exchanges are included in the System routing table as low cost protected market centers: Cboe BYX Exchange, Inc. (''BYX''), Nasdaq BX, Inc. (''BX''), and New York Stock Exchange LLC (''NYSE''). Pursuant to Rule 11.11(g), the Exchange has determined to modify System routing table such that NYSE would no longer be listed as a low cost protected market center where orders are first routed after seeking available liquidity on the EDGA Book and certain non-exchange destinations. In addition, the Exchange has decided to add NYSE American LLC (''NYSE American'') and NYSE National, Inc. (''NYSE National'') as low cost protected market centers. These changes to the System routing table are scheduled to be introduced on February 1, 2019.

Currently, orders routed using the ROUC routing strategy are provided a rebate of $0.00150 per share when routed to BYX,[4] charged a fee of $0.00290 per share when routed to Nasdaq PSX (''PSX''),[5] or charged a fee of $0.00200 per share when routed to a non-exchange destination.[6] Orders routed to other markets may be subject to different non-ROUC specific pricing. The Exchange proposes to add two new fee codes, MX and NX, that relate to orders routed to NYSE American and NYSE National, respectively, using the ROUC routing strategy. In securities at or above $1.00, orders routed using the ROUC routing strategy would be charged a fee of $0.00020 per share if executed on NYSE American, and provided a rebate of $0.00200 per share if executed on NYSE National. As proposed, the Exchange would not charge a fee or provide a rebate for orders routed in securities priced below $1.00. The proposed fees and rebates chosen for routing to these venues generally reflect the current transaction fees and rebates available for accessing liquidity on those markets.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and furthers the requirements of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed routing fee changes are appropriate as they reflect changes to the System routing table used to determine the order in which venues are accessed using the ROUC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 11.13(b)(3) [sic]. The Exchange reserves the right to route orders simultaneously or sequentially, maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *Id.*

[4] *See* EDGA Equities Schedule of Fees, fee code ''BY.'' This rebate applies to securities priced at or above $1.00. For securities priced below $1.00, a fee equal to 0.10% of the dollar value is applied instead. *Id.*

[5] *See* EDGA Equities Schedule of Fees, fee code ''K.'' This fee applies to securities priced at or above $1.00. For securities priced below $1.00, a fee equal to 0.30% of the dollar value is applied instead. *Id.*

[6] *See* EDGA Equities Schedule of Fees, fee code ''Q.'' This fee applies to securities priced at or above $1.00. For securities priced below $1.00, a fee equal to 0.30% of the dollar value is applied instead. *Id.*

[7] NYSE American currently charges a fee for removing liquidity that is $0.00020 per share in securities priced at or above $1.00, and 0.25% of the total dollar value of the transaction in securities priced below $1.00. *See* NYSE American Equities Price List, I. Transaction Fees.

NYSE National currently provides a rebate of $0.00200 per share in securities priced at or above $1.00 for members that achieve their taking tier. *See* NYSE National Schedule of Fees and Rebates, I. Transaction Fees, B. Tiered Rates. Orders that remove liquidity in securities below $1.00 are executed without charge or rebate. *See* NYSE National, Schedule of Fees and Rebates, I. Transaction Fees, A. General Rates.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

routing strategy. ROUC specifically targets certain equities exchanges that provide cheap executions or rebates to liquidity removing orders, and routes to those venues after trading with the EDGA Book and certain non-exchange destinations, and prior to accessing liquidity that may be available on other venues on the System routing table. The Exchange believes that the proposed changes reflect the intent of members when they submit routable order flow to the Exchange using the ROUC routing strategy.

The Exchange believes that it is reasonable and equitable to provide special pricing for orders routed to NYSE American and NYSE National using the ROUC routing strategy. As mentioned previously, the Exchange is adding these two exchanges to its list of low cost protected market centers, and wishes to provide the benefit of the rebate or lower fee provided by those markets to EDGA members using the ROUC routing strategy. The Exchange believes that these changes may increase interest in the Exchange's ROUC routing strategy, in particular, by passing on better pricing to EDGA members that choose to enter such orders on the Exchange, thereby encouraging additional order flow to be entered to the EDGA Book.

The rebates provided to orders routed to NYSE National using the ROUC routing strategy would be limited to order price at or above $1.00 in light of the fact that NYSE National does not provide rebates to liquidity removing orders in securities priced below $1.00. For securities priced below $1.00, the Exchange would charge no fee and provide no rebate, which is equivalent to pricing on NYSE National.[10] Without limiting the proposed rebate for NYSE National to securities priced at or above $1.00, the Exchange would pay a significant rebate that would not be recouped via a rebate earned from the execution venue. The Exchange believes that is reasonable and equitable to limit routing rebates to circumstances where the Exchange would actually earn a rebate from the away venue in order to properly recoup the costs of accessing liquidity on such markets. Similarly, the Exchange would charge no fee and provide no rebate for orders routed to NYSE American using the ROUC routing strategy in securities priced below $1.00. Although such orders are charged a fee by NYSE American equal to 0.25% of the total dollar value of the transaction, the Exchange has determined to provide free executions as an additional inducement for members to send their routable order flow to EDGA.

Finally, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as the proposed fees and rebates would apply equally to all members that use the Exchange to route orders using the associated routing strategy. The proposed fees are designed to reflect the fees charged and rebates offered by certain away trading centers that are accessed by Exchange routing strategies, and are being made in conjunction with changes to the System routing table designed to provide members with low cost executions for their routable order flow. Furthermore, if members do not favor the proposed pricing, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed routing fee changes are designed to reflect changes being made to the System routing table used to determine where to send certain routable orders, and generally provide better pricing to members for orders routed to low cost protected market centers using the Exchange's routing strategies. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2019–002 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–CboeEDGA–2019–002. 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

[10] *See* supra note 8 [sic].

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2019–002 and should be submitted on or before March 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02736 Filed 2–19–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs (ACVBA). The meeting is open to the public.

DATES: Thursday, March 7, 2019, from 9:00 a.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be held at SBA, 409 3rd Street, SW, Eisenhower Conference Room B, Washington, DC 20416, and via webinar.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is requested. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line—''RSVP for 03/07/2019 ACVBA Public Meeting.''

Anyone wishing to make comments to the ACVBA must contact SBA's Office of Veterans Business Development (OVBD) no later than March 1, 2019 via email *veteransbusiness@sba.gov,* or via phone at (202) 205–6773. Comments for the record will be limited to five minutes to accommodate as many participants as possible.

Additionally, special accommodation requests should also be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* For more information on veteran owned small business programs, please visit *www.sba.gov/ovbd.*

Security instructions: Those attending the meeting are encouraged to arrive early to allow for security clearance into the building. Attendees should use the main entrance to access SBA headquarters, at 3rd and D Streets SW. For security purposes attendees must:

1. Present a valid photo ID to receive a visitor badge.
2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans Business Affairs (ACVBA).
3. Visitor badges are issued by the security officer at the main entrance. Visitors are required to display their visitor badge at all times while inside the building.
4. Laptops and other electronic devices may be inspected and logged for identification purposes.
5. Due to limited parking options, Metro's Federal Center SW station is the easiest way to access SBA headquarters.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note, and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2019.

Dated: February 13, 2019.

Nicole Nelson,

Committee Management Officer (Acting).

[FR Doc. 2019–02757 Filed 2–19–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development (Task Force). The meeting is open to the public.

DATES: Wednesday, March 6, 2019, from 1:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be held at SBA, 409 3rd Street SW, Eisenhower Conference Room B, Washington, DC 20416, and via webinar.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is requested. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line—''RSVP for 03/06/2019 IATF Public Meeting.''

Anyone wishing to make comments to the Task Force must contact SBA's Office of Veterans Business Development (OVBD) no later than March 1, 2019 via email *veteransbusiness@sba.gov,* or via phone at (202) 205–6773. Comments for the record will be limited to five minutes to accommodate as many participants as possible.

Additionally, special accommodation requests should also be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* For more information on veteran owned small business programs, please visit *www.sba.gov/ovbd.*

Security instructions: Those attending the meeting are encouraged to arrive early to allow for security clearance into the building. Attendees should use the main entrance to access SBA headquarters, at 3rd and D Streets SW. For security purposes attendees must:

1. Present a valid photo ID to receive a visitor badge.
2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans Business Affairs (ACVBA).
3. Visitor badges are issued by the security officer at the main entrance. Visitors are required to display their visitor badge at all times while inside the building.
4. Laptops and other electronic devices may be inspected and logged for identification purposes.
5. Due to limited parking options, Metro's Federal Center SW station is the easiest way to access SBA headquarters.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (Task Force). The Task Force is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development

opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. The purpose of this meeting is to discuss efforts that support service-disabled veteran-owned small businesses, updates on past and current events, and the Task Force's objectives for fiscal year 2019.

Dated: February 13, 2019.

Nicole Nelson,

Committee Management Officer (Acting).

[FR Doc. 2019–02754 Filed 2–19–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 10680]

Notice of Public Meeting

The Department of State will conduct an open meeting at 11:00 a.m. on Wednesday, March 20, in Room 7M15–01, United States Coast Guard Headquarters, 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593–7213. The primary purpose of the meeting is to prepare for the 106th session of the International Maritime Organization's (IMO) Legal Committee to be held at the IMO Headquarters, United Kingdom, March 27–29, 2019.

The agenda items to be considered include:

—Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol
—Provision of financial security in case of abandonment of seafarers
—Fair treatment of seafarers in the event of a maritime accident
—Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships
—Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)
—Advice and guidance in connection with the implementation of IMO instruments
—Piracy
—Any other business

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 796 771 84. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Stephen Hubchen, by email at *Stephen.K.Hubchen@uscg.mil,* by phone at (202) 372–1198, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509 not later than March 14, 2019, four business days prior to the meeting. Requests made after March 14, 2019 might not be able to be accommodated, and same day requests will not be accommodated due to the building's security process. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters. Coast Guard Headquarters is accessible by taxi, public transportation, and privately owned conveyance (upon request). In the case of inclement weather where the U.S. government is closed or delayed, a public meeting may be conducted virtually by calling (202) 475–4000, Participant code: 796 771 84. The meeting coordinator will confirm whether the virtual public meeting will be utilized. Members of the public can find out whether the U.S. government is delayed or closed by visiting *www.opm.gov/status/.* Additional information regarding this and other IMO public meetings may be found at: *www.uscg.mil/imo.*

Joel C. Coito,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2019–02822 Filed 2–19–19; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 10679]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Family Law

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss a draft Guide to Good Practice on Article 13(b) of the Hague Abduction Convention. The public meeting will take place on February 27, from 12 p.m. until 5 p.m. EDT. This is not a meeting of the full Advisory Committee.

At its 2012 annual meeting, the Council on General Affairs and Policy of the Hague Conference on Private International Law established a Working Group to develop a Guide to Good Practice on the application of Article 13(b) of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Hague Conference has provided multiple draft texts. The current text can be provided to public meeting participants. It is anticipated that this text will be finalized at the 2019 meeting of the Council on General Affairs and policy, which will convene on March 5.

The purpose of the public meeting is to obtain the views of concerned stakeholders on the current draft Guide to Good Practice. Those who cannot attend but wish to comment are welcome to do so by email to Michael Coffee at *coffeems@state.gov.*

Time and Place: The meeting will take place on February 27, from 12 p.m. until 5 p.m. EDT in Room 240, South Building, State Department Annex 4A, Washington, DC 20037. Participants should plan to arrive at the Navy Hill gate on the west side of 23rd Street NW, at the intersection of 23rd Street NW and D Street NW by 11:30 a.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than February 20, 2019. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

You must notify *pil@state.gov* of your intention to participate in the meeting, either in person or by telephone, to receive an agenda for the meeting as well as the current draft of the Guide to Good Practice.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities.

The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security

Records System of Records Notice (State-36) at *https://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State.

[FR Doc. 2019–02778 Filed 2–19–19; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 33763 (Sub-No. 1)]

Paducah & Louisville Railway, Inc.—Trackage Rights Exemption—CSX Transportation, Inc.

Paducah & Louisville Railway, Inc. (P&L), a wholly owned subsidiary of P&L Transportation, Inc., has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to allow P&L and CSX Transportation, Inc. (CSXT), to amend trackage rights to expand P&L's use of an approximately 27.7-mile CSXT rail line for the movement of coal between the Dotiki mines at or near milepost OMF 298.3 and a connection with P&L at or near milepost OHJ 274.8. In particular, traffic will move from the Dotiki mines to milepost OMB 275.9, then cross CSXT's Trident Interlocker at milepost OOH 276.5, then through CSXT's Madisonville Yard at Madisonville, Ky., at milepost OHC 275.0, then to point of switch on East Diamond Lead near milepost OHC 273.3, and then CSXT's Cimarron Spur to the connection with P&L near milepost OHJ 274.8 (Dotiki Line).

P&L has held restricted, overhead trackage rights over a portion of the Dotiki Line since 1999.[1] P&L states that, since that time, it has operated those trackage rights for the limited purpose of delivering coal to the Louisville Gas & Electric Cane Run plant in Louisville, Ky., and the Louisville Gas & Electric Mill Creek plant in Kosmosdale, Ky. (the LGE Move), via a P&L line that connects to the Dotiki Line. According to P&L, CSXT and P&L have recently agreed to amend the trackage rights to also allow P&L to move up to one million tons of coal annually over the Dotiki Line to a P&L line that reaches the Ohio and Tennessee Rivers for the export market at the Calvert City, Four Rivers, or GRT Transfer Terminals.

A redacted version of the trackage rights agreement between P&L and CSXT was filed with the verified notice of exemption.[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

The transaction may be consummated on or after March 6, 2019, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 27, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 33763 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 14, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–02835 Filed 2–19–19; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Paducah & Louisville Ry.—Trackage Rights Exemption—CSX Transp., Inc.,* FD 33763 (STB served June 23, 1999).

[2] On February 12, 2019, as required by 49 CFR 1180.6(a)(7)(ii), the unredacted version was filed under seal along with a motion for protective order. That motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at the Trenton-Mercer Airport (TTN), Ewing, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on a request to release airport land for disposal and request for comment.

SUMMARY: The FAA proposes to rule and is requesting public comment on Mercer County's proposed land release and disposal of 3.428 acres of on-airport property at the Trenton-Mercer Airport, Ewing, NJ. The land was purchased with federal financial assistance through FAAP Grant 9–28–012–5803.

DATES: Comments must be received on or before March 22, 2019.

ADDRESSES: Comments on this application may be mailed or delivered to the following address:

Melinda Montgomery, Manager, Trenton-Mercer Airport, 340 Scotch Road, Suite 200, Ewing, NJ 08628, 609–882–1601

and at the FAA Harrisburg Airports District Office:

Rick Harner, Acting Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830

FOR FURTHER INFORMATION CONTACT: Charles Trice, Project Manager, Harrisburg Airports District Office, location listed above. Telephone: (717) 730–2843. The request to release airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the request:

The County requests the release of a total of 3.428 acres of property. The property is currently airport-dedicated property, and is occupied by a branch of the Mercer County Library, including the library building itself and parking for the library users. The property will continue to be owned by the County and used for its current purpose. The only change is that the property will no longer be designated as federally obligated airport property. As shown on the Airport Layout Plan, the subject property is to the south and west of Runway 34 and is separated from the rest of airport property by a railroad line. Based on this location the property is not needed now or in the foreseeable future for aeronautical purposes and/or airport development. Through funding the County of Mercer has provided to the airport over the last 6 years, the County has already paid well in excess of the sum of both the fair market fee simple value of the subject property and the fair market value of the lease rate of the subject property over each of the last 6 years combined. Therefore, it is not proposed that the County of Mercer provide any additional funding, so as to secure the release of this acreage from federal obligations.

Any person may inspect the request by appointment at the FAA office address listed above.

Interested persons are invited to comment on the proposed lease. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, February 13, 2019.

Rick Harner,

Acting Manager, Harrisburg Airports District Office.

[FR Doc. 2019–02838 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0005]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel QUICKSILVER (30′ Powerboat with Two Engines); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0005 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0005 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0005, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled **PUBLIC PARTICIPATION.**

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel QUICKSILVER is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Recreational use including sight-seeing and recreational sportfishing.''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Hawaii'' (Base of Operations: Kona, Hawaii)
—VESSEL LENGTH AND TYPE: 30′ Powerboat with Two Engines

The complete application is available for review identified in the DOT docket as MARAD–2019–0005 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0005 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–02769 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0008]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel VICTORIA (40′ Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0008 by any one of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Search MARAD–2019–0008 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0008, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VICTORIA is:

—*Intended Commercial Use of Vessel:* Passenger charter coast-wise
—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Marina del Rey, CA)
—*Vessel Length and Type: 40′ Catamaran.*

The complete application is available for review identified in the DOT docket as MARAD–2019–0008 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0008 or visit the Docket Management Facility (see

for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–02767 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0009]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HALCYON SEAS (70' Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise

trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0009 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0009 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0009, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HALCYON SEAS is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Yacht Charter in Florida''
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Florida'' (Base of Operations: Miami, Florida)
—VESSEL LENGTH AND TYPE: 70′ Motor Vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0009 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0009 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. § 55103, 46 U.S.C. § 12121)

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–02763 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0003]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MR. BADGER (41′ Sailing Boat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0003 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0003 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0003, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled **PUBLIC PARTICIPATION**.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MR. BADGER is:

—INTENDED COMMERCIAL USE OF VESSEL: Sailing Charters
—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''Rhode Island, Massachusetts, Maine, Connecticut'' (Base of Operations: Jamestown, RI)
—VESSEL LENGTH AND TYPE: 41′ Sailing Boat

The complete application is available for review identified in the DOT docket as MARAD–2019–0003 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0003 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–02765 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0006]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MEANT TO BE (39′ Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0006 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0006 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0006, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if

we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled *Public Participation.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MEANT TO BE is:

—*Intended Commercial Use of Vessel:* ''Charters''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Marina del Rey, CA)

—*Vessel Length and Type:* 39′ Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2019–0006 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2019–0006 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–02764 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0010]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WARFISH (45′ Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0010 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0010 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0010, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WARFISH is:

—*Intended Commercial Use of Vessel:* Research and expeditionary vessel specializing in underwater videography and photography for the study and observation of Pelagic wildlife. WARFISH intends to provide a customized platform from which recreational passengers, scientists and students from educational and research organizations may safely and comfortably pursue their recreational and scientific objectives.

—*Geographic Region Including Base of Operations:* ''Rhode Island, Massachusetts, New York (excluding New York Harbor), New Hampshire and Maine'' (Base of Operations: South Kingston, RI)

—*Vessel Length and Type:* 45′ Motor Vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0010 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0010 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–02768 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0002]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEA YOU LATER (101′ Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0002 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0002 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–20019–0002, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453,

Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA YOU LATER is:

—Intended Commercial Use of Vessel: ''Recreational Charter for Passenger Only''
—Geographic Region Including Base of Operations: ''Florida'' (Base of Operations: St. Petersburg, Florida)
—Vessel Length and Type: 101′ Motor Vessel with 2 engines

The complete application is available for review identified in the DOT docket as MARAD–2019–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0002 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 14, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2019–02766 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; American Honda Motor Co., Inc.

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the American Honda Motor Co., Inc.'s (Honda) petition for exemption of the 2019 Model Year (MY) Passport vehicle line in accordance with *Exemption from Vehicle Theft Prevention Standard.* NHTSA is granting this petition because the agency has determined that the antitheft device to be placed on the vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with the 2019 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is 202–366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated March 16, 2018, Honda requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Passport vehicle line beginning with MY 2019. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Honda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Passport vehicle line. Honda stated that both the 2-wheel drive and all-wheel drive variants of its Passport vehicle line will be equipped with a transponder-based engine immobilizer antitheft device as standard equipment. Honda also stated that the Passport vehicle line will be equipped with a ''smart entry with push button start'' ignition system (''smart entry'') and an audible and visible vehicle security alarm system as standard equipment on the entire vehicle line. Key components of the antitheft device will include a passive immobilizer, ''smart entry'' remote, powertrain control module (PCM) and an Immobilizer Entry System (IMOES).

Honda's submission is considered a complete petition as required by 49 CFR 543.8, in that it meets the general requirements contained in § 543.5 and

the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.6, Honda provided information on the reliability and durability of its proposed device. To ensure the reliability and durability of the device, Honda provided the requirements and results of the testing it conducted based on its own specified standards. Honda believes that the device is reliable and durable since it complied with the specified requirements for each test and that installation of the antitheft device as standard equipment on the Passport vehicle line will reduce its theft rates and prove to be more effective than parts marking. Honda stated that it also follows a rigorous development process that ensure that its antitheft device is reliable and robust for the life of the vehicle. In further support of the reliability and durability of its antitheft device, Honda also stated that its antitheft device does not require the presence of a key fob remote battery to function nor does it have any moving parts, which it believes reduces the chance for deterioration and wear from normal use.

Honda stated that its ''smart entry'' antitheft device requires a remote fob ''smart entry remote/keyless key with a matching code to start the vehicle. Honda stated that its immobilizer device is always active and automatically checks for the matching immobilizer code when the ''smart entry'' remote is within operating range. Upon validation of the matching code by the IMOES, pushing the engine start/stop button on the vehicle dashboard allows the engine to start and the driver the ability to operate the vehicle. Honda further states that if a ''smart entry'' remote without a matching code is placed inside the operating range and the engine start/stop button is pushed, the PCM will prevent fueling and starting of the engine and the ignition immobilizer telltale indicator will begin flashing on the instrument panel.

Honda stated that it will also install an audible and visible vehicle security system as standard equipment on all its Passport vehicles to attract attention to an unauthorized person attempting to enter its vehicles without a key or remote through the doors, hood, or trunk. Whenever an attempt is made to open one of its protected areas without using the correct key in one of the key cylinders or the key fob to disarm the vehicle, the vehicle's horn will sound and its lights will flash. Honda further stated that its antitheft device is activated when all the doors are locked and the hood and trunk are closed and locked. Honda's antitheft device is deactivated when either of the key fob buttons are used to unlock the vehicle doors, the driver's door is unlocked by using the key in the key cylinder or either of the front door handles are grabbed when the ''smart entry remote'' is within operating range of the vehicle. Honda further stated that its antitheft device automatically activates at every vehicle shutdown and deactivates at every vehicle start, without requiring any action from the vehicle operator.

Honda believes that the design of its door keys and key cylinders will provide additional reliability, durability and security. Honda stated that its door keys and key cylinders will prohibit theft because they are designed to be more resistant to picking and duplication is controlled by authorized dealers. Honda further stated that the key fob remotes will also utilize rolling codes for the lock and unlock features, the hood release lever will be securely located inside the vehicle, the vehicle will be equipped with counterfeit-resistant vehicle identification number (VIN) plates and secondary VINs will be inscribed on the vehicle frame, ensuring further reliability, durability and vehicle security.

In support of its belief that its antitheft device will be as or more effective in reducing and deterring vehicle theft than the parts-marking requirement, Honda referenced data showing several instances of the effectiveness of its proposed immobilizer device. Honda stated that it believes the immobilizer antitheft device proposed for installation on its Passport vehicle line will be as effective in reducing and deterring theft as the antitheft device installed on its MY 2003–2014 Honda Pilot vehicle line because both vehicles will be installed with the same basic immobilizer and share the same platform. Honda also provided the testing results for the immobilizer device currently installed on its Pilot vehicle line. Honda stated that the Pilot's antitheft device is similar in design to that proposed for installation on its Passport vehicle line and has already been granted an exemption from the parts marking requirements (See 81 FR 12197, March 8, 2016).

Honda also submitted supporting data from the Insurance Institute for Highway Safety (IIHS) and the agency for the years after installation of the immobilizer device on the Pilot vehicle, showing a sustained decreasing theft rate trend over the years. Honda first installed an immobilizer device as standard equipment on its MY 2003 Honda Pilot vehicles. Honda also referenced NHTSA's theft rate data for MYs 2003–2014 showing a consistent rate of thefts well below the 1990/91 median theft rate (3.5826) since the installation of its immobilizer device on the Honda Pilot vehicle line. NHTSA notes that the theft rates for the MYs 2012–2014 Honda Pilot vehicle line are 0.9846, 1.2111 and 0.5446 respectively. Using an average of three MYs' theft data (2012–2014), the theft rate for the Honda Pilot vehicle line is well below the median at 0.9134. Additionally, Honda referenced the IIHS 2003–2015 Insurance Theft Report showing an overall reduction in theft claims for the Honda Pilot vehicles after introduction of its immobilizer device on the vehicle line. Specifically, the IIHS data showed for years 2003 through 2015, theft claims for the Honda Pilot were 427 (2003–2005), 563 (2006–2008), 361 (2009–2011), 389 (2012–2014) and 335 (2012–2015) respectively. Honda also stated that the IIHS data further revealed that while the Pilot vehicle line has sustained lower theft rates over the years, it has also experienced the top ten lowest theft rates from 2006–2009 when compared to other competitive vehicles that have already been granted an exemption by the agency.

Additionally, Honda stated that the immobilizer device proposed for the Passport vehicle line is similar to the design of antitheft devices installed on its 2014 Honda Civic, 2015 Honda Accord, 2016 Honda CR–V, 2017 Honda Pilot and 2018 Acura MDX vehicles which have already been granted parts-marking exemptions by the agency. The agency granted the petitions for the Honda Civic vehicle line in full beginning with MY 2014 (see 61 FR 19363, March 29, 2013), the Honda Accord vehicle line beginning with MY 2015 (*see* 79 FR 18409, April 1, 2014), the Honda CR–V vehicle line beginning with MY 2016 (*see* 80 FR 3733, January 23, 2015), the Honda Pilot beginning with MY 2017 (*see* 81 FR 12197, March 8, 2016) and the Acura MDX beginning with MY 2018 (*see* 82 FR 22055, May 11, 2017). The agency notes that the average theft rate for the Honda Civic, Accord, CR–V, Pilot and MDX vehicle lines using three MYs' data (MYs 2012 through 2014) are 0.6611, 0.7139, 0.3203, 0.9134 and 0.4630 respectively.

Based on the supporting evidence submitted by Honda on its device, the agency believes that the antitheft device for the Passport vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will: Promote activation; attract

attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; prevent defeat or circumvention of the device by unauthorized persons; prevent operation of the vehicle by unauthorized entrants; and ensure the reliability and durability of the device, as required by § 543.6(a)(3).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8 (b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Honda has provided adequate reasons for its belief that the antitheft device for the Passport vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. This conclusion is based on the information Honda provided about its device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Honda decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.8(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.10(c)(2) could place on exempted vehicle manufacturers and itself. In order to reduce the administrative burden, at the manufacturer's option, the agency can be consulted about whether a change can be characterized as *de minimis.* This may save the manufacturer the time to prepare and submit a petition to modify its antitheft device if indeed the agency determines the change to be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify its exemption.

NHTSA also notes that Honda has requested confidential treatment seeking, among other things, that NHTSA keep the model name and release date of the Passport vehicle line confidential until the ''model is announced by Honda.'' Although the agency has found several Honda dealer websites announcing the future arrival of the 2019 Passport, Honda reports that the company has not announced the MY or intended name of this model. As noted at the time NHTSA issued the final rule establishing part 543, manufacturers requested that NHTSA treat a model name as confidential until the model is introduced rather than at the time the agency granted an exemption petition.[1] The Agency stated that any secrecy regarding a model name must be balanced against the need of law enforcement agencies to know which car lines will be required to be marked under the theft prevention standard.[2] NHTSA determined that it will treat a model name as confidential until the June 1 immediately preceding the new vehicle's first model year if a manufacturer can show that it has not released a new model's nameplate either to dealers or to any other portion of the public. *Id.* Because June 1, 2018 has now passed, the Agency is releasing the model name and year in deference to the need of law enforcement to identify exempt vehicles.

For the foregoing reasons, the agency hereby grants in full Honda's petition for exemption for the Passport vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2019 model year vehicles.

[1] 52 FR 33821, 33824, September 8, 1987.

[2] Id.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–02723 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; American Honda Motor Co., Inc.

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the American Honda Motor Co., Inc.'s (Honda) petition for exemption of the 2020 Acura TLX vehicle line in accordance with *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with the 2020 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated July 30, 2018, Honda requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Acura TLX vehicle line beginning with MY 2020. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Honda provided a detailed description and diagram of the identity, design, and location of the components of the

antitheft device for the Acura TLX vehicle line. Honda stated that its vehicle line will offer a front-wheel drive and an all-wheel drive variation. Honda further stated that its MY 2020 Acura TLX vehicle line will be installed with a transponder-based, engine immobilizer antitheft device as standard equipment. More specifically, Honda stated that the TLX vehicle line will be equipped with a ''smart entry push button start'' ignition system (''smart entry'') and a vehicle security alarm system as standard equipment on the entire vehicle line. Key components of the antitheft device will include a passive immobilizer, ''smart entry'' remote, powertrain control module (PCM) and an Immobilizer Entry System (IMOES).

Honda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.6, Honda provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Honda conducted tests based on its own specified standards. Honda provided a detailed list of the tests it used to validate the integrity, durability, and reliability of its device and believes that it follows a rigorous development process to ensure that its antitheft device will be reliable and robust for the life of the vehicle. Honda stated that its device does not require the presence of a ''smart entry'' remote battery to function nor does it have any moving parts (*i.e.,* the PCM, IMOES, ignition key, ''smart entry'' remote and the corresponding electrical components found within its own housing units), which it believes reduces the chance for deterioration and wear from normal use. Honda also stated that additional levels of reliability, durability, and security will be accomplished because it will incorporate counterfeit resistant vehicle identification number (VIN) plates, secondary VINs, a hood release located inside the vehicle, and its smart entry remote will utilize rolling codes for the lock and unlock functions of its vehicles.

Honda further stated that its immobilizer device is always active without requiring any action from the vehicle operator as long as the matching smart entry remote is outside of the operating range and the engine is turned off. Deactivation occurs when a valid ''smart entry'' remote with matching codes is placed within operating range and the engine start/stop button is pushed to start the vehicle. Honda further states that if a ''smart entry'' remote without a matching code is placed inside the operating range and the engine start/stop button is pushed, the PCM will prevent fueling and starting of the engine. Additionally, an ignition immobilizer telltale indicator will begin flashing on the meter panel providing the status of the immobilizer device.

Honda stated that the audible and visible vehicle security alarm system installed on its TLX vehicles will monitor any attempts of unauthorized entry and attract attention to an unauthorized person attempting to enter its vehicles without the use of a ''smart entry'' remote or its built-in mechanical door key. Specifically, Honda stated that whenever an attempt is made to open one of its vehicle doors, hood or trunk without using the ''smart entry'' remote or turning a key in the key cylinder to disarm the vehicle, the vehicle's horn will sound, and its lights will flash. Honda stated that its vehicle security system is activated when all of the doors are locked and the hood and trunk are closed and locked. Honda further stated that its vehicle security system is deactivated by using the key fob buttons to unlock the vehicle doors or having the ''smart entry'' remote within operating range when the operator grabs either of the vehicle's front door handles.

In support of its belief that its antitheft device will be as or more effective in reducing and deterring vehicle theft than the parts-marking requirement, Honda referenced data showing several instances of the effectiveness of its proposed immobilizer device. Honda first installed an immobilizer device as standard equipment on its MY 2015 Acura TLX vehicles, which is also the year the TLX was first introduced. There is no current theft rate data available for the Acura TLX vehicle line. Additionally, Honda referenced the Highway Loss Data Institute's 2015–2017's Insurance Theft Report showing the application of years of the immobilizer that is currently available. Honda believes that installation of the antitheft immobilizer device as standard equipment reduces the vehicle theft rate by making conventional methods of theft obsolete, *i.e.,* punching out the steering column or hot-wiring the ignition.

Additionally, Honda stated that the immobilizer device proposed for the 2018 TLX is similar to the design offered on its Honda Civic, Honda Accord, Honda CR-V, Honda Pilot, and Acura MDX vehicles. The agency granted the petition for the Honda Civic vehicle line in full beginning with MY 2014 (see 61 FR 19363, March 29, 2013), the Honda Accord vehicle line beginning with MY 2015 (see 79 FR 18409, April 1, 2014), the Honda CR-V vehicle line beginning with MY 2016 (see 80 FR 3733, January 23, 2015), the Honda Pilot beginning with MY 2017 (see 81 FR 12197, March 8, 2016), and the Acura MDX beginning with MY 2018 (see 82 FR 22055, May 11, 2017). The agency notes that the average theft rate for the Honda Civic, Accord, CR-V, Pilot, and Acura MDX vehicle lines using three MYs' data (MYs 2012 through 2014) are 0.6611, 0.7139, 0.3203, 0.9134, and 0.4630 respectively.

Based on the supporting evidence submitted by Honda on its device, the agency believes that the antitheft device for the Acura TLX vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Honda has provided adequate reasons for its belief that the antitheft device for the Acura TLX vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. This conclusion is based on the information Honda provided about its device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the

petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Honda decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Honda's petition for exemption for the Acura TLX vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2020 model year vehicles.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–02753 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Fiat Chrysler Automobiles US LLC

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Fiat Chrysler Automobiles US LLC's, (FCA) petition for exemption of the Jeep Gladiator vehicle line in accordance with *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the *Federal Motor Vehicle Theft Prevention Standard.* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with 2020 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated August 21, 2018, FCA requested an exemption from the parts-marking requirements of the Theft Prevention Standard for its Jeep Gladiator vehicle line beginning with MY 2020. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, FCA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Jeep Gladiator vehicle line. FCA stated that its MY 2020 Jeep Gladiator vehicle line will be installed with the Sentry Key Immobilizer System (SKIS) antitheft device as standard equipment on the entire vehicle line. The SKIS will provide passive vehicle protection by preventing the engine from operating unless a valid electronically encoded key is inside the cabin of the vehicle and a valid key code is detected in the ignition system of the vehicle. Key components of the antitheft device will include an immobilizer, a Radio Frequency Hub Module (RFHM), Engine Control Module (ECM), Body Controller Module (BCM), a Keyless Ignition Node (KIN), Transponder Key/FOB with Integrated Key (FOBIK) and an Instrument Panel Cluster (IPC) which contains the telltale function only. According to FCA, these components work collectively to perform the immobilizer function. FCA will not provide an audible alert, however, the vehicle will be equipped with a security indicator in the instrument panel cluster that will flash if an invalid transponder key is detected.

FCA's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 49 CFR part 543.6, FCA provided information on the reliability and durability of the device. FCA conducted tests based on its own specified standards (*i.e.,* voltage range and temperature range) and stated its belief that the device meets the stringent performance standards prescribed. Specifically, FCA stated that its device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. In addition to the design and validation test criteria, FCA stated that 100% of its systems undergo a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in the vehicles.

FCA stated that the SKIS immobilizer feature is activated when the transponder key is removed from the ignition system (whether the doors are open or not) and the ignition system is in the ''OFF'' position. Specifically, once the SKIS is activated, only a valid transponder key that is recognized by the ignition system will disable it and allow the vehicle to start and continue to run. FCA stated that the functions and features of the SKIS are all integral to the BCM in this vehicle. The RFHM contains a Radio Frequency (RF) transceiver and a microprocessor and it initiates the ignition process by communicating with the BCM. The RFHM and the ECM both use software that includes a rolling code algorithm strategy which helps to reduce the possibility of unauthorized SKIS disarming. The microprocessor-based SKIS hardware and software also uses

electronic messages to communicate with other electronic modules in the vehicle over the Controller Area Network (CAN) data bus.

FCA also stated that, the SKIS uses RF communication with an Advanced Encryption System (AES) to obtain confirmation that the transponder key is a valid FOBIK for operating the vehicle. The RFHM receives Low Frequency (LF) and/or RF signals from the Sentry Key transponder through a tuned RF antenna. If the response identifies the FOBIK as valid, communication between the RFHM, the BCM, and the ECM proceeds. FCA also stated that for added security, each RFHM is programmed with a unique secret key code that is stored in memory. FCA stated that once a Sentry Key has been programmed to a particular vehicle, it cannot be used on any other vehicle.

FCA stated that, the RFHM is connected to a Keyless Ignition Node (KIN) with a START/STOP push button as an ignition switch. FCA further stated that when the START/STOP button is pressed, the RFHM transmits a signal to the transponder key through LF antennas to the RFHM. The RFHM then waits for a RF signal response from the transponder in the FOBIK. If the response received identifies the FOBIK as valid, the communication between the RFHM, the BCM, and the ECM then proceeds. If the ECM receives an invalid key message, or receives no message from the RFHM over the CAN data bus, the engine will be disabled.

To avoid any perceived delay when starting the vehicle with a valid transponder key and to prevent unburned fuel from entering the exhaust, FCA stated that the engine is permitted to run for no more than two seconds if an invalid transponder key is used. Additionally, FCA stated that only six consecutive invalid vehicle start attempts will be permitted and all other attempts will be locked out by preventing the fuel injectors from firing and disabling the starter.

FCA stated that its vehicles are also equipped with a security indicator that acts as a diagnostic indicator. FCA stated that if the RFHM detects an invalid transponder key or if a transponder key related fault occurs, the security indicator will flash. If the RFHM detects a system malfunction or the SKIS becomes ineffective, the security indicator will stay on. The SKIS also performs a self-test each time the ignition system is turned to the RUN position and will store fault information in the form of a diagnostic trouble code in RFHM memory if a system malfunction is detected.

FCA stated that it expects the Jeep Gladiator vehicle line to mirror the lower theft rate results achieved by the Jeep Wrangler vehicle line when ignition immobilizer systems were installed as standard equipment on the line. FCA stated that it has offered the SKIS immobilizer device as standard equipment on all Jeep Wrangler vehicles since MY 2007. According to FCA, the average theft rate for Jeep Wrangler vehicles, based on NHTSA's theft rate data for the five model years prior to (1995–2000), when a vehicle immobilizer device was not installed as standard equipment was 2.8264 per one thousand vehicles produced. This was significantly lower than the 1990/1991 median theft rate of 3.5826. However, FCA also indicated that the average theft rate for the Jeep Wrangler for the five model years (2007–2014), after installation of the standard immobilizer device was 0.5033, which is significantly lower than the theft rate without the standard immobilizer system. The Jeep Wrangler vehicle line was also granted an exemption from the parts-marking requirements beginning with MY 2009 (72 FR 62728, November 6, 2007). FCA further exerts that NHTSA's theft rate data for the Jeep Wrangler indicates that the inclusion of a standard immobilizer device resulted in an 82 percent net average reduction in vehicle thefts. Theft rate data reported in the **Federal Register** notices published by the agency show that the theft rate for the Jeep Wrangler vehicle line, using an average of three MYs' data (2012–2014) is also 0.3979, which is significantly lower than the median theft rate established by the agency.

Based on the evidence submitted by FCA, the agency believes that the antitheft device for the Jeep Gladiator vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 41). The agency concludes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR part 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that FCA has provided adequate reasons for its belief that the antitheft device for the vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information FCA provided about its device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard. FCA stated that an official nameplate for the vehicle has not yet been determined.

If FCA decides not to use the exemption for this vehicle line, it must formally notify the agency. If such a decision is made, the vehicle line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FCA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. 49 CFR part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, 49 CFR part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that 49 CFR part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it may want to consult the

agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full FCA's petition for exemption for its Jeep Gladiator vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2020 Jeep Gladiator vehicles.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–02724 Filed 2–19–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors Corporation

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the General Motors Corporation's (GM) petition for exemption of the Buick Encore vehicle line in accordance with *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with the 2020 model year (MY).

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Standards, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. His fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated October 11, 2018, GM requested an exemption from the parts-marking requirements of the Theft Prevention Standard for its Buick Encore vehicle line beginning with MY 2020. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Buick Encore vehicle line. GM stated that its MY 2020 Buick Encore vehicle line will be installed with the PASS-Key III+ antitheft device as standard equipment on the entire vehicle line. The PASS-Key III+ is a passive, transponder-based, electronic immobilizer device. The major components of the antitheft device are a PASS-Key III+ controller module, engine control module (ECM), electronically-coded ignition key, radio frequency (RF) receiver, immobilizer exciter module, three low frequency antennas and a passive antenna module. GM stated that the device will provide protection against unauthorized use (*i.e.,* starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights or horn alarm). GM stated that the PASS-Key III+ immobilizer device is designed to be active at all times without direct intervention by the vehicle operator. GM further stated that activation of the device occurs immediately after the ignition has been turned off and the key has been removed and deactivation of the antitheft device occurs automatically when the engine is started. GM stated that the Buick Encore vehicle line will be equipped with one of two ignition versions. Specifically, the Buick Encore will be equipped with either a keyed or keyless ignition version of its PASS-Key III+ immobilizer antitheft device. GM also stated that the ''keyed'' ignition version utilizes a special ignition key and decoder module and its electrical code must be sensed and properly decoded by the controller module before the vehicle can be operated. GM further stated that with the ''keyless'' ignition version, an electronic key fob performs normal remote keyless entry functions and communicates with the vehicle without direct owner intervention. Specifically, during operation of the vehicle, when the owner presses the engine start/stop switch, the vehicle transmits a randomly generated challenge and vehicle identifier within the passenger compartment of the vehicle via three low-frequency antennas, controlled by the passive antenna module. The electronic key receives the data and if the vehicle identifier matches that of the vehicle, the electronic key will calculate the response to the vehicle using the challenge and secret information shared between the key and the vehicle. The electronic key then transmits the response via a radio frequency channel to a vehicle mounted receiver, conveying the information to the PASS-Key III+ control module. The PASS-Key III+ control module compares the received response with an internally calculated response. If the values match, the device will allow the vehicle to enter functional modes and transmit a fixed code pre-release password to the engine controller over the serial data bus, and enable computation and communication of a response to any valid challenge received from the engine controller. If a valid key is not detected, the device will not transmit a fixed code pre-release password to the engine controller preventing fuel from being delivered to the engine, enabling starting.

GM's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, GM provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of the specific tests it used to validate the integrity, durability and reliability of the PASS-Key III+ device. Some of the tests GM conducted were for high temperature storage, low temperature storage, thermal shock, humidity, frost, salt fog, flammability and others. GM believes that the device is reliable and durable since the components must operate as designed after each test. GM further stated that the design and assembly processes of the PASS-Key III+ subsystem and components are validated for 10 years of vehicle life and 150,000 miles of performance.

GM further stated that the PASS-Key III+ device has been designed to enhance the functionality and theft protection provided by its first, second and third generation PASS-Key, PASS-Key II, and PASS-Key III devices. GM also referenced data provided by the American Automobile Manufacturers Association (AAMA) in support of the effectiveness of GM's PASS-Key devices in reducing and deterring motor vehicle theft. Specifically, GM stated that data which provide the basis for GM's confidence that the PASS-Key III+ system will be effective in reducing and

deterring motor vehicle theft are contained in the response of the American Automobile Manufacturers Association (AAMA) to Docket 97–042; Notice I (NHTSA Request for Comments on its preliminary Report to Congress on the effects of the Anti Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984). In the Report to Congress, AAMA stated the more recent antitheft systems are more effective in reducing auto theft. AAMA also cited the Highway Loss Data Institute (HLDI) findings on the effectiveness of antitheft devices in reducing theft. AAMA noted that vehicles with antitheft devices are less likely to be stolen for joyriding or transportation and therefore, their recovery rates are lower.

GM also noted that theft rate data have indicated a decline in theft rates for vehicle lines equipped with comparable devices that have received full exemptions from the parts-marking requirements. GM stated that the theft rate data, as provided by the Federal Bureau of Investigation's National Crime Information Center (NCIC) and compiled by the agency, show that theft rates are lower for exempted GM models equipped with the PASS-Key-like systems than the theft rates for earlier models with similar appearance and construction that were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III devices on other GM models, and the advanced technology utilized in PASS-Key III+, GM believes that the PASS-Key III+ device will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

GM stated that it believes that PASS-Key III+ devices will be more effective in deterring theft than the parts-marking requirements and that the agency should find that inclusion of the PASS-Key III+ device on the Buick Encore vehicle line is sufficient to qualify it for full exemption from the parts-marking requirements.

GM's proposed device lacks an audible or visible alarm. Therefore, this device cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. GM stated that based on comparison of the reduction in the theft rates of Chevrolet Corvettes using a passive antitheft device along with an audible/visible alarm system to the reduction in theft rates for the Chevrolet Camaro models equipped with a passive antitheft device without an alarm, GM finds that the lack of an alarm or attention-attracting device does not compromise the theft deterrent performance of a device such as PASS-Key III+ device. In these instances, the agency has concluded that the lack of an audible or visible alarm has not prevented these antitheft devices from being effective protection against theft. Using an average of 3 MYs data (2012–2014), NHTSA's theft rates for the Chevrolet Corvette and Chevrolet Camaro vehicle lines are 1.2140 and 3.1337 respectively, both below the median theft rate of 3.5826.

Based on the evidence submitted by GM, the agency believes that the antitheft device for the Buick Encore vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that GM has provided adequate reasons for its belief that the antitheft device for the Buick Encore vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information GM provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the Buick Encore vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its model year (MY) 2020 vehicles.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–02752 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0202]

Privacy Act of 1974; Department of Transportation, Office of the Secretary of Transportation; DOT/OST–008, Departmental Advisory Committee Files

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of Privacy Act system of records and rescission of one system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Transportation proposes to reissue, with updates, a system of records, ''Department of Transportation/OST–008 Departmental Advisory Committee Files.'' This system of records allows the Department to collect and maintain records submitted to the Department by or in connection with applicants for members on a Department of Transportation advisory committees to enable the Department to make decisions about committee membership and manage committees. The Department also consolidating an existing system of records notice, ''DOT/RSPA 08, Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquids'' with this system and rescinding the notice for DOT/RSPA 08.

DATES: Written comments should be submitted on or before March 22, 2019. The Department may publish an amended Systems of Records Notice in light of any comments received. This system will be effective March 22, 2019.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2018–0202 by any of the following methods:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2018–0202. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202.527.3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Office of the Secretary (OST) proposes to reissue and update a system of records titled, ''Department of Transportation/OST–008, Departmental Advisory Committee Files.'' The Department also intends to rescind the following legacy notice, ''DOT/RSPA 08, Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquids'' and consolidate records managed under that Notice with this updated System.

The DOT sponsors advisory committees in accordance with the Federal Advisory Committee Act when DOT or Congress deems it would be beneficial to obtain advice or recommendations on issues or policies under consideration by DOT. The composition of an advisory committee is determined by DOT, or statute, and may include special government employees, Federal employees, or representatives of outside organizations, such as trade groups or industry. Individuals interested in serving on an advisory committee may apply directly to DOT for consideration, or be recommended by others. The DOT collects information about applicants to assess their qualifications to serve as a committee member, such as employment and educational experiences, references, and other information relevant to the applicant's qualifications, which may include a criminal background check and credit check. This system was originally established in the mid-1970s; however, the Department later determined that files about advisory committee applicants and members were not retrievable by individual name or personal identifier. As a result, the Department retired this notice in 2000. The Department is updating its processes for evaluating applications for membership on advisory committees and for managing records about committee applicants and members. As these records will be retrievable by applicant/member name, the Department is reinstating the notice, with updates to reflect changes in the location of the Department's headquarters and incorporation of all applicable DOT general routine uses.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DOT proposes two routine uses for this system, in addition to the general routine uses applicable this system and described below. The DOT may disclose information to OMB, the Executive Office of the President, or the General Services Administration, when necessary and relevant to DOT's management of the advisory committee, including as needed in DOT's consideration of applicants for membership on an advisory committee, or to comply with any obligations to report information about advisory committees to those entities. This use is compatible with the purpose of the collection, which is to administer advisory committees in accordance with the Federal Advisory Committee Act. In addition, DOT may disclose information from this system to the public to inform the public about the identity and qualifications of individuals selected to serve as members of advisory committees. As one of the purposes of the Federal Advisory Committee Act is to ensure transparency to the public about advisory committee advice and activities, a routine use permitting disclosure of information about advisory committee members is compatible with the purpose of the collection.

We also are consolidating an existing system of records notices, ''DOT/RSPA 08, Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquids'' into this system of records and retiring the notice for DOT/RSPA 08. This system was established for the Pipeline and Hazardous Materials Safety Administration to maintain information about applicants and members of the Pipeline Safety Committees for Natural Gas and Hazardous Liquids. As this type of information also be covered by this System, the Department determined that separate notices are not needed and, therefore, is retiring the notice for DOT/RSPA–08.

Finally, we have updated the format and included the relevant and compatible Departmental General Routine Uses to conform to Office of Management and Budget Circular A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.'' This updated system will be included in DOT's inventory of record systems. This Notice

does not apply to records covered by other System of Records Notices.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Transportation (DOT)/OST–008, Federal Advisory Committee Files

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Department of Transportation headquarters in Washington, DC.

SYSTEM MANAGER AND ADDRESS:

Committee Management Officer, U.S. Department of Transportation, Office of the Secretary, Office of the Executive Secretariat, 1200 New Jersey Ave. SE, Washington, DC 20950, (202) 366–4277.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act, Public Law 92–463, as amended.

PURPOSE(S):

The information in this system is used to evaluate and select individuals for membership on advisory committees within the jurisdiction of the Department, and for the management of advisory committees in the Department, including the preparation of reports, documenting membership, and the nomination and appointment of members, member terms, vacancies, acceptance, and separation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or were members of advisory committees, who have applied or were nominated to serve on advisory committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: Advisory committee applicant, nominee, and member name, title, home address, business address, employer, organizational affiliation, phone number, email address, educational institutions attended, degrees held, employment history, references/letters of recommendation, and other information relevant to an individual's qualifications to serve on an advisory committee. This system also may include the applicant's date of birth, social security number, gender, race, drivers license number and state of issuance, and prior residences for purposes of obtaining a credit check and criminal background check. The system will also include the results of those checks. The system also includes information about the member's position on the committee, including documentation of their appointment, date of appointment, term, date of separation, and reason for separation.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals who apply to serve on advisory committees, individuals identified by applicants as their references, Members of Congress, applicants' former employers. Information may also be obtained from publicly available sources with the applicant's consent.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses

1. To the Executive Office of the President, the Office of Management and Budget, or the General Services Administration when necessary in the administration of the Department's advisory committee, including complying with reporting obligations;

2. To the public, information about an advisory committee's membership and qualifications when the Department deems it necessary to inform the public of advisory committee membership or activities. This routine use does not permit disclosure of information obtained in a criminal background or credit check, social security number, driver license number, and date of birth.

Department General Routine Uses

3. To the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of implementing, investigating, prosecuting, or enforcing a statute, regulation, rule or order, when a record in this system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, including any records from this system relevant to the implementation, investigation, prosecution, or enforcement of the statute, regulation, rule, or order that was or may have been violated;

4. To a Federal, State, or local agency maintaining civil, criminal, or other information, such as current licenses, if necessary for DOT to obtain information relevant to a DOT decision;

5. To the Department of Justice, or any other Federal agency conducting litigation, when (a) DOT, (b) any DOT employee, in his/her official capacity, or in his/her individual capacity if the Department of Justice has agreed to represent the employee, or (c) the United States or any agency thereof, is a party to litigation or has an interest in litigation, and DOT determines that the use of the records by the Department of Justice or other Federal agency conducting the litigation is relevant and necessary to the litigation;

6. To parties in proceedings before any court or adjudicative or administrative body before which DOT appears when (a) DOT, (b) any DOT employee in his or her official capacity, or in his or her individual capacity where DOT has agreed to represent the employee, or (c) the United States or any agency thereof is a party to litigation or has an interest in the proceeding, and DOT determined that is relevant and necessary to the proceeding;

7. To the National Archives and Records Administration for an inspection under 44 U.S.C. 2904 and 2906.

8. To another agency or instrumentality of any government jurisdiction for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims; however, this routine use only permits the disclosure of names pursuant to a computer matching program that otherwise complies with the requirements of the Privacy Act.

9. To the Attorney General of the United States, of his/her designee, information indicating that a person

meets any of the qualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. Should the validity of the information DOT provides to the Attorney General or his/her designee be disputed, DOT may disclose to that National Background Information Check System, established by the Brady Handgun Violence Prevention Act, any information from this system necessary to resolve the dispute.

10. To appropriate agencies, entities, and persons, when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or not) that rely on the compromised information; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. To DOT's contractors and their agents, DOT's experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

12. To an agency, organization, or individual for the purpose of performing an audit or oversight related to this system or records, provided that DOT determines the records are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

13. To a Federal, State, local, tribal, foreign government, or multinational agency, either in response to a request or upon DOT's initiative, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or law enforcement information (Guideline 2, report attached to White House Memorandum, ''Information Sharing Environment,'' Nov. 22, 2006), when DOT finds that disclosure of the record is necessary and relevant to detect, prevent, disrupt, preempt, or mitigate the effects of terrorist activities against the territory, people, and interests of the United States, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–456, and Executive Order 13388 (Oct. 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically and/or on paper in secure facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name of individual or committee name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Resumes and references of members and applicants are retained and disposed of when they are superseded, obsolete, or no longer needed, in accordance with General Records Schedule 6.2, Item 050. Records related to the selection and membership of committee members are permanent, and transferred to the National Archives and Records Administration when they are 15 years old or the committee is termination, whichever is sooner, in accordance with General Records Schedule 6.2, Item 010.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Appropriate controls have been imposed to minimize the risk of compromising the information that is being stored. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request to the System Manager in writing in writing to the address provided under ''System Manager and Address.'' Individuals may also search the public docket at *www.regulations.gov* by their name.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the procedures described in ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

Individuals seeking notification of whether this system contains records about him or her may contact the System Manager following the procedures described in the ''Record Access Procedures'' above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

DOT/OST–008; 65 FR 19570 (April 11, 2000); DOT/RSPA–08 65 FR 19561, (April 11, 2000).

Issued in Washington, DC, on February 14, 2019.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2019–02758 Filed 2–19–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning allocation of estimated tax payments to beneficiaries.

DATES: Written comments should be received on or before April 22, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Estimated Tax Payments to Beneficiaries.

OMB Number: 1545–1020.

Form Number: 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estimate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Current Actions: There are no changes being made to the burden associated with the collection tool at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 59 minutes.

Estimated Total Annual Burden Hours: 990.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–02727 Filed 2–19–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning change of address or responsible party.

DATES: Written comments should be received on or before April 22, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Change of Address or Change of Address or Responsible Party—Business.

OMB Number: 1545–1163.

Form Number: 8822 and 8822–B.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location. Form 8822–B is used to notify the Internal Revenue Service of a change in a business mailing address, business location, or the identity of a responsible party.

Current Actions: There are no changes being made to the burden associated with the collection tool at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000,000.

Estimated Time per Respondent: 16 minutes.

Estimated Total Annual Burden Hours: 264,792.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: February 12, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–02728 Filed 2–19–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 22, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Beer for Exportation.

OMB Control Number: 1513–0114.

Type of Review: Revision of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 5051, Federal excise tax is imposed on beer removed from domestic breweries for consumption or sale. However, under the IRC at 26 U.S.C. 5053, beer may be removed from a brewery without payment of tax for export or for use as supplies on certain vessels and aircraft, subject to regulations prescribed regulations by the Secretary of the Treasury. Under that authority, TTB requires brewers to give notice of each such removal on form TTB F 5130.12. Alternatively, respondents may apply to TTB to use an alternative method to report beer removed for export via a monthly summary report, provided that the respondent completes TTB F 5130.12 for each export shipment and maintains that form and the related supporting export records, such as bills of lading, at the respondent's premises. TTB requires this information to ensure that exportation of the beer took place as claimed and that untaxpaid beer is not diverted into the taxable domestic market.

Form: TTB F 5130.12.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 230.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,420.

Estimated Time per Response: 1.65 hours using TTB F 5130.12 or 3 hours using the Alternate Procedure.

Estimated Total Annual Burden Hours: 8,235.

2. Title: Bond for Drawback under 26 U.S.C. 5111.

OMB Control Number: 1513–0116.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5111–5114 authorizes drawback (refund) of all but $1.00 per gallon of the Federal excise tax paid on distilled spirits, if the spirits are subsequently used in the manufacture of certain nonbeverage products such as medicines, food products, flavors, and perfumes. Persons making such products must file claims proving their eligibility for drawback, and such claims may be filed on either a monthly or a quarterly basis. However, the IRC at 26 U.S.C. 5114(b) authorizes the Secretary of the Treasury to require persons filing monthly claims to file a bond in order to protect the revenue. Under the TTB regulations, monthly claimants file the required bond with TTB using form TTB F 5154.3.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: Monthly or quarterly.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 24 minutes.

Estimated Total Annual Burden Hours: 4.

3. Title: Certificate of Taxpaid Alcohol.

OMB Control Number: 1513–0131.

Type of Review: Extension without change of a currently approved collection.

Description: As provided by 19 U.S.C. 1313(d), flavoring extracts, medicinal and toilet preparations, and perfumes produced in the United States and then exported are eligible for drawback (refund) of all Federal alcohol excise taxes paid on the distilled spirits used to make the product. Under the TTB regulations at 27 CFR 17.181, nonbeverage product export drawback claims are made to U.S. Customs and Border Protection (CBP) and may cover either the full rate of the distilled spirits excise tax paid on the alcohol if the respondent has made no nonbeverage drawback claim to TTB under 26 U.S.C. 5114 (*see* OMB control number 1513–0030), or may cover the remainder of the excise tax paid on the spirits if a claim under 26 U.S.C. 5114 was previously made. When such a drawback claim is to be made, the respondent first submits TTB F 5100.4 to TTB, and, after verification of the provided information, TTB certifies the form to show that the excise taxes claimed for drawback were paid and not previously refunded. TTB returns the certified form to the respondent, who then submits it to CBP as part of the respondent's export drawback claim.

Form: TTB F 5100.4.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 5.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: February 13, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–02725 Filed 2–19–19; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Intent To Reestablish

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Veterans Affairs intends to reestablish the Department of Veterans Affairs Voluntary Service National Advisory Committee for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW, Washington, DC 20420; telephone (202) 266–4660; or email at *Jeffrey.Moragne@va.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee ACT, notice is hereby given that the Secretary of Veterans Affairs intends to reestablish the Department of Veterans Affairs Voluntary Service National Advisory Committee for 2 years from the filing date of the charter's reestablishment.

The Committee advises the Secretary on the coordination and promotion of volunteer activities and strategic partnership within VA health care facilities, in the community, and on other matters related to volunteerism and charitable giving. The Committee serves in an advisory capacity by making recommendations to the Secretary for the improvement of voluntary services to Veteran-patients by means of coordination on a national level of the established plans and policies for community volunteer participation.

Dated: February 14, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–02750 Filed 2–19–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Agency Information Collection Activity; VA MATIC Enrollment/Change

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 22, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–0525'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA MATIC Enrollment/Change, VA Form 29–0165.

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–0165 is used by the insured to enroll in or to change the account number and/or bank from which a deduction was previously authorized. The information requested is authorized by law, 38 U.S.C. 1908.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–02722 Filed 2–19–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 200 and 242

Transaction Fee Pilot for NMS Stocks; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 242

[Release No. 34–84875; File No. S7–05–18]

RIN 3235–0761

Transaction Fee Pilot for NMS Stocks

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting a new rule of Regulation National Market System (''Regulation NMS'') under the Securities and Exchange Act of 1934 (''Exchange Act'') to conduct a Transaction Fee Pilot (''Pilot'') for National Market System (''NMS'') stocks to study the effects that exchange transaction fee-and-rebate pricing models may have on order routing behavior, execution quality, and market quality. We expect the data generated by the pilot, combined with data from existing sources, will facilitate an empirical evaluation of whether the existing exchange transaction-based fee and rebate structure is operating effectively to further statutory goals.

DATES:

Effective date: April 22, 2019 through December 29, 2023.

Compliance date: As designated by Notice pursuant to 17 CFR 242.610T(c)(2).

FOR FURTHER INFORMATION CONTACT: Richard Holley III, Assistant Director; Johnna Dumler, Special Counsel; Erika Berg, Special Counsel; or Benjamin Bernstein, Special Counsel, each with the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, or at (202) 551–5777.

SUPPLEMENTARY INFORMATION: The Commission is adopting new 17 CFR 242.610T (Rule 610T) to conduct a Transaction Fee Pilot for NMS stocks.

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I. Executive Summary of Rule 610T

Congress directed the Commission, through Section 11A of the Exchange Act, to facilitate the establishment of a national market system and use its broad authority to carry out the objectives of Section 11A, including, among others, to assure the economically efficient execution of securities transactions.[1] In furtherance of these goals, and as part of its oversight of registered national securities exchanges, the Commission periodically undertakes reviews of various aspects of market structure and current regulations to evaluate whether, in light of changes in technology and business practices, the current regulatory framework continues to fairly, effectively, and efficiently promote fair and orderly markets, serve the public interest and the protection of investors, and promote capital formation.

As discussed below, one aspect of the current regulatory framework focuses on the current pricing and fee structure for transactions in securities. As the Commission discussed in its Pilot proposal, the predominant transaction pricing structure that developed among equities exchanges to attract order flow is the ''maker-taker'' fee model.[2] Specifically, out of thirteen equities exchanges, seven utilize the ''maker-taker'' fee model, in which they pay a rebate to a provider of liquidity and charge a fee to a taker of liquidity. Among the remaining exchanges, four utilize a ''taker-maker'' pricing model (also called an inverted model) where they charge a fee to a provider of liquidity and pay a rebate to a taker of liquidity,[3] and two have a ''flat fee'' model.[4] In recent years this area has

[1] 15 U.S.C. 78k–1(a)(1)(C)(i). *See also supra* Section II.G (discussing the Commission's authority to conduct the Pilot).

[2] *See* Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (''Proposing Release'' or ''Proposal'').

[3] *See* Cboe BYX U.S. Equities Exchange Fee Schedule (as of December 2018), *available at https://markets.cboe.com/us/equities/membership/fee_schedule/byx/;* Cboe EDGA U.S. Equities Exchange Fee Schedule (as of December 2018), *available at https://markets.cboe.com/us/equities/membership/fee_schedule/edga/;* Nasdaq BX Fee Schedule (as of December 2018), *available at https://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing;* NYSE National Schedule of Fees and Rebates (as of December 2018), *available at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.* EDGA adopted a taker-maker fee schedule in July 2018. *See* Securities Exchange Act Release No. 83643 (July 16, 2018), 83 FR 34643 (July 20, 2018) (SR–CboeEDGA–2018–012).

[4] *See* Investors Exchange Fee Schedule (as of December 2018), *available at https://iextrading.com/trading/fees/;* NYSE American Equities Trading Fees and Price List (as of December 2018), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.* NYSE American offers rebates to eDMMs in their assigned NYSE American-listed securities.

attracted considerable attention and generated significant debate, focusing on the effects, both positive and negative, that exchange transaction-based pricing models may have on market quality and execution quality, with some commenters advocating action by the Commission.

The Commission is uniquely situated and vested with the responsibility under Section 11A of the Exchange Act to examine the impact that this aspect of our market structure has on our national market system. And, in light of the questions raised about the impact of these fee models and the amount of attention garnered, we believe this is an area ripe for Commission review. But, the Commission currently lacks the data necessary to meaningfully analyze the impact that exchange transaction fee-and-rebate pricing models have on order routing behavior, market and execution quality, and our market structure generally. To address this information gap, the Commission has designed the Pilot to produce data that will facilitate a more thorough understanding of the potential issues associated with exchange transaction-based pricing models. In particular, the Commission has designed the Pilot to gather data on the effect both current regulatory fee caps and rebates have on market quality and execution quality. The data gathered will assist the Commission in determining whether any changes in the current regulatory framework are appropriate and enable the Commission to make more informed and effective policy decisions. This, in turn, enables the Commission to carry out the objectives of the national market system and oversee the national securities exchanges.

As discussed fully in the proposing release, the Commission proposed a pilot to test the effect of exchange transaction fees and rebates.[5] The following chart summarizes the terms of the Pilot as adopted, which are discussed in more detail below:

TRANSACTION FEE PILOT FOR NMS STOCKS

Duration	2 years with an automatic sunset at 1 year unless, no later than 30 days prior to that time, the Commission publishes a notice that the pilot shall continue for up to 1 additional year; plus a 6-month pre-Pilot Period and 6-month post-Pilot Period.			
Applicable trading centers.	Equities exchanges (including maker-taker & taker-maker) but not ATSs or other non-exchange trading centers.			
Pilot securities	NMS stocks with average daily trading volumes ≥30,000 shares with a share price ≥$2 per share that do not close below $1 per share during the Pilot and that have an unlimited duration or a duration beyond the end of the post-Pilot Period.			
	Group	Number of NMS stocks	Fee cap	Rebates permitted?
Pilot design	Test Group 1	730	*$0.0010 fee cap* for removing and providing displayed liquidity (no cap on rebates).	Yes.
	Test Group 2	730 (plus appended Canadian interlisted stocks).	The 17 CFR 242.610(c) (Rule 610(c)) $0.0030 cap continues to apply to fees for removing displayed liquidity.	No. *Rebates and Linked Pricing Prohibited* for removing and providing displayed and undisplayed liquidity (except for specified market maker activity).
	Control Group	Pilot Securities not in Test Groups 1 or 2.	The Rule 610(c) cap continues to apply to fees for removing displayed liquidity (no cap on rebates).	Yes.
Pilot data	1. Pilot Securities Exchange Lists and Pilot Securities Change Lists. 2. Exchange Transaction Fee Summary. 3. Order Routing Datasets.			

II. Discussion of Rule 610T

In response to its proposal to conduct a Transaction Fee Pilot in NMS stocks (the ''Pilot''), the Commission received a number of comment letters from a diverse group of commenters, including exchanges, investment managers, broker-dealers, and other market participants, as well as academics, listed issuers, analytics firms, market observers, and industry associations.[6] As discussed below, after review and consideration of the comments received, the Commission is adopting Rule 610T with certain modifications from that in the proposal.

A. Focus on Exchange Pricing Models and the Effects They Can Cause

1. Exchange Fee Models and Regulatory Framework

Regardless of the fee model, all fees of a registered national securities exchange ''exchange'') are subject to the standards and process requirements set forth in the federal securities laws.[7] In particular, Section 6 of the Exchange Act requires, among other things, that the rules of an exchange provide for the ''equitable allocation'' of ''reasonable'' fees and that they not be ''designed to permit unfair discrimination.''[8] Section 11A of the Exchange Act directs the Commission to use its authority to facilitate the establishment of a national market system for securities that assures economically efficient execution of securities transactions, fair competition, availability of information with respect

[5] *See* Proposing Release, *supra* note 2.

[6] The Proposal was developed, in part, by reference to a recommendation for an access fee pilot submitted to the Commission by the Equity Market Structure Advisory Committee (the ''EMSAC''). *See* Proposing Release, *supra* note 2, at 13009, 13012–14.

[7] Under the Exchange Act, exchange fee changes are effective on the day that the exchange files them with the Commission, and neither advance notice nor Commission action is required before an exchange may implement a fee change. *See* 15 U.S.C. 78s(b)(3)(A)(ii). The Commission may, within 60 days after an exchange filed its fee change with the Commission, summarily suspend the new fee and institute proceedings to determine whether to disapprove it. *See* 15 U.S.C. 78s(b)(3)(C).

[8] *See* 15 U.S.C. 78f(b)(4)–(5).

to quotations for and transactions in securities, and the practicability of brokers executing investors' orders in the best market.[9] In addition, Rule 610(c) of Regulation NMS imposes upon exchanges a fee cap of $0.0030 per share for the execution of an order against its ''protected quotation.'' [10]

In 2005, when it adopted the fee limitation in Rule 610(c), the Commission noted, in part:

> The adopted fee limitation set forth in Rule 610(c) of Regulation NMS is designed to preclude individual trading centers from raising their fees substantially in an attempt to take improper advantage of strengthened protection against trade-throughs and the adoption of a private linkage regime. In particular, the fee limitation is necessary to address 'outlier' trading centers that otherwise might charge high fees to other market participants required to access their quotations by the Order Protection Rule. It also precludes a trading center from charging high fees selectively to competitors, practices that have occurred in the market for Nasdaq stocks. In the absence of a fee limitation, the adoption of the Order Protection Rule and private linkages could significantly boost the viability of the outlier business model. Outlier markets might well try to take advantage of intermarket price protection by acting essentially as a toll booth between price levels. The high fee market likely will be the last market to which orders would be routed, but prices could not move to the next level until someone routed an order to take out the displayed price at the outlier market.[11]

In light of the considerable debate surrounding exchange fee models that pay rebates, which is well documented in the comment letters submitted on the proposed Pilot, and the passage of time since the Commission first adopted the Rule 610(c) fee cap as part of Regulation NMS in 2005, the Commission now seeks to gather data to facilitate an empirical assessment of the effect of exchange transaction fees and rebates broadly—including the impact and continued appropriateness of the Rule 610(c) fee cap [12]—by testing the effects of changes to exchange fees and rebates on the markets and market participant behavior.

2. Impact of Exchange Fee Models

In response to the Proposing Release, the Commission received a number of comment letters criticizing existing fee-and-rebate pricing models, but also a number of comment letters expressing support for those same pricing regimes.[13]

Many commenters focused on one potential distortion—whether current pricing models ''present broker-dealers with a potential conflict of interest,'' because their ''duty to pursue best execution could be compromised when their trading venue decision is driven by the economic incentive to minimize access fees paid and maximize rebates received.'' [14] As another commenter explained, ''a broker is incentivized to route an order to the venue that pays it the most (or costs the least), instead of the venue that has the highest likelihood of offering the best execution for its customers, such as the one that offers a higher probability of execution or meaningful price improvement.'' [15] As evidence of the potential harm that can result from the conflicts presented by exchange rebates, one commenter noted that institutional investors ''that specifically instruct brokers to remove rebate-driven trading behaviors from their algorithms achieve significantly lower trading costs that result in higher returns to their investors.'' [16] One commenter attributed this harm to the tendency of rebates to ''affect the length of the order queue of passive limit orders on the major maker-taker exchanges, while high take fees on these markets make them less attractive for marketable orders that cross the spread.'' The commenter argued that the ''net result of this perverse pricing dynamic is a lower likelihood of execution and a higher likelihood of adverse selection for orders in the maker-taker queues,'' because orders at the ''middle or back of the queue . . . are less likely to trade at their desired price, and when they do trade, the overall market price as reflected by the [National Best Bid and Offer (''NBBO'')] is more likely to move against them, than when trading on venues that do not pay rebates.'' [17]

A number of commenters discussed other potential effects of exchange pricing models. Some commenters believed that transaction fees and rebates contribute to market fragmentation [18] because they encourage investors to ''turn to inverted markets to improve queue priority'' [19] or to ''route orders to non-exchange trading centers to avoid the higher access fees that exchanges charge to subsidize the rebates they offer.'' [20] Likewise, one commenter thought that ''transaction fees and rebates contribute to market complexity through the proliferation of new order types . . . designed to exploit different transaction pricing models.'' [21] Other commenters believed that ''[t]ransaction fees and rebates . . . undermine market transparency because the prices displayed by exchanges—and provided on trade reports—do not include fee or rebate information and therefore do not fully reflect net trade prices.'' [22] Finally, some commenters

[9] *See* 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 242.610(c); Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37543–46 (June 29, 2005) (''NMS Adopting Release''). *See also* 17 CFR 242.600(b)(58) (defining ''protected quotation''); 17 CFR 242.600(b)(57) (defining ''protected bid or protected offer''); 17 CFR 242.600(b)(3) (defining ''automated quotation'').

[11] NMS Adopting Release, *supra* note 10, at 37545.

[12] At the time of its adoption in 2005, the fee cap codified the then-prevailing fee level set through competition among the various trading centers. *See* NMS Adopting Release, *supra* note 10, at 37545 (stating that ''the $0.003 fee limitation is consistent with current business practices, as very few trading centers currently charge fees that exceed this amount'').

[13] The potential distortions mentioned by the commenters (and discussed in this section) include, among others: (1) Conflicts of interest faced by routing broker-dealers; (2) excess intermediation and potential adverse selection; (3) market fragmentation; (4) exchange fee avoidance; (5) complexity; (6) transparency; and (7) elevated fees to subsidize rebates.

[14] Capital Group Letter, at 2. *See also, e.g.,* ICI Letter I, at 2; Vanguard Letter, at 2; Invesco Letter, at 2; CFA Letter, at 2; Oppenheimer Letter, at 2; Spatt Letter, at 4; AJO Letter, at 1; Larry Harris Letter, at 3.

[15] Healthy Markets Letter I, at 5. *See also, e.g.,* Copeland Letter, at 1; Wellington Letter, at 1; Norges Letter, at 2.

[16] Babelfish Letter, at 1–3 (also referencing a Clearpool Group study that found that a ''fee sensitive VWAP algorithm executed during volatile times incurred seven times as much cost as a fee agnostic algorithm''). *See also* T. Rowe Price Letter, at 2 (stating that ''[r]etail orders . . . are generally placed on the exchange that offers the highest rebate to the broker, but show[s] lower execution quality in terms of reduced probability of execution''); Capital Group Letter, at 2 (''Our internal trade analysis suggests that execution quality may be negatively impacted when broker-dealers' routing decisions are made to minimize access fees.'').

[17] IEX Letter I, at 6, A–1–A–2; IEX Letter II, at 7; IEX Letter IV (appending research to support these views). *See also, e.g.,* Babelfish Letter, at 2 (stating that a ''frequently realized scenario is that flow sent solely to a high rebate destination waits in queue, often winds up canceled because price moves away, and then receives an inferior price upon the eventual execution''); Larry Harris Letter, at 1, 3; Brandes Letter, at 1–2. *But see* Grasso Letter, at 3 (''waiting for a rebate[ ] may be fine'' if ''you have low confidence about future prices for a large order and don't mind if the order trades slowly while you accumulate shares'').

[18] *See, e.g.,* ICI Letter I, at 2.

[19] Credit Suisse Commentary, at 2. *See also, e.g.,* Larry Harris Letter, at 3 (noting that ''orders standing at inverted exchanges usually execute before orders standing at the same price at maker-taker exchanges'').

[20] Capital Group Letter, at 2. *See also, e.g.,* IEX Letter I, at 3 (''Excessive take fees . . . have been criticized as leading to the migration of some order flow to less-regulated non-exchange venues in search of reduced transaction costs, resulting in increased market fragmentation and market complexity.'').

[21] ICI Letter I, at 2. *See also, e.g.,* Vanguard Letter, at 2 (indicating that the ''desire to maximize rebate revenue and avoid fees created order complexity within the equity markets as traders sought profitable trading strategies'').

[22] ICI Letter I, at 2. *See also, e.g.,* Goldman Sachs Letter, at 3; Invesco Letter, at 2; State Street Letter,

asserted that current pricing models unfairly subsidize rebates [23] or benefit sophisticated market participants like market-makers and proprietary traders at the expense of other market participants.[24]

Other commenters expressed support for current exchange pricing models. For example, one commenter believed that maker-taker pricing ''provides important benefits to issuers and investors,'' because exchanges ''use rebates as a tool to promote displayed liquidity and price discovery, which results in competitive bid-ask spreads, saving transaction costs that investors may otherwise incur.'' [25] Another commenter argued that rebates can promote displayed liquidity by providing ''a payment in exchange for posters of liquidity giving up several valuable options,'' including ''the power to decide the time of the trade'' and the ability to conceal trading intentions until the point of execution.[26] Building on this idea, one commenter characterized ''[a]ccess fee caps and related rebates'' as features that ''enable exchanges to compete with non-exchange trading venues by essentially subsidizing the posted prices . . . and narrow[ing] the NBBO, making it slightly more expensive to either match or improve upon those prices off-exchange.'' [27]

As commenters fundamentally disagreed about the effect of exchange transaction fee models and whether they have a positive or a negative impact on the U.S. equities markets, commenters also held conflicting views regarding whether and how the Commission should conduct the Pilot.

3. Focus on Exchange Fee Models

Recognizing the unique regulatory framework applicable to exchange fees, and the disagreement over the impact of exchange fees and rebates on the markets and market participants, the Commission focused its proposed Pilot on studying the effect of exchange transaction fees and rebates on order routing behavior, execution quality, and market quality. Accordingly, the Commission proposed to include within the Pilot all equities exchanges regardless of fee model.

A large number of commenters supported applying the Pilot to all equities exchanges.[28] For example, one commenter believed that the Pilot ''should include all equities exchanges . . . because rebates of any kind provide inducements to trade and distort markets.'' [29] A different commenter thought that including taker-maker exchanges was ''both logical and feasible, given that all equities exchanges assess fees that are subject to the Exchange Act and its rule filing requirements.'' [30] Other commenters ''agree[d] with the Commission's assessment that the Pilot should apply to all equity exchanges . . . thus treating all similarly situated exchanges equally,'' because this would be ''critically important in determining what impact the reduction of access fees or the elimination of rebates will have on order routing practices.'' [31] Some other commenters, however, opposed including taker-maker exchanges in the Pilot, noting that Rule 610(c) does not apply to taker-maker exchanges.[32]

After considering the comments on this issue, the Commission continues to believe that focusing the Pilot on equities exchanges regardless of fee model is appropriate because it treats alike similarly situated entities that all are subject to the same regulatory framework and thereby will allow the Commission to evaluate the effect of exchange fee-and-rebate pricing models and the continued appropriateness of the Rule 610(c) fee cap. Further, it would be incongruous to study rebates and fees offered by one type of equities exchange (maker-taker), but not another type of equities exchange (taker-maker) where the fees of both types of entities are subject to the same legal requirements and can introduce the same types of distortions that the Pilot seeks to study.

4. Non-Exchange Trading Centers

As proposed, the Pilot would exclude non-exchange trading centers such as alternative trading systems (''ATSs'').[33] Several commenters opined on this aspect of the proposal. A number of commenters agreed with the Commission's proposal to exclude non-exchange trading centers from the Pilot.[34] Some of those commenters noted that exchanges are subject to various fee-related regulatory provisions that are entirely inapplicable to non-exchange trading centers. For example, one commenter noted that non-exchange trading centers are not currently subject to any access fee caps, and including such trading venues in the Pilot ''would have the unintended and harmful effect of unnecessarily changing ATS business models . . . .'' [35]

In addition, several commenters emphasized the fundamental ways in which the fee structures employed by

at 2; Wellington Letter, at 1; Oppenheimer Letter, at 2; Capital Group Letter, at 3.

[23] *See, e.g.,* Clearpool Letter, at 3 (stating that ''exchanges chase order flow and provide rebates and other pricing incentives to the largest trading firms at the expense of smaller market participants who cannot take advantage of such rebates and, in effect, end up subsidizing the trading of larger firms''); IEX Letter I, at 3 (stating that transaction fees are ''used in effect to subsidize the payment of rebates,'' which ''results in a substantial penalty on investors and other participants who . . . have a need for immediate liquidity'').

[24] *See, e.g.,* T. Rowe Price Letter, at 2 (stating that rebates lead to ''excessive intermediation . . . benefiting short-term intermediaries at the expense of long-term investors''); ModernIR Letter, at 3 (stating that rebates ''promote[ ] arbitrage, and price-setting as its own end,'' leading to a ''paucity of real orders''); Larry Harris Letter, at 1, 5–6 (stating that current pricing models facilitate ''the execution of various parasitic trading strategies by proprietary traders to the detriment of public investors''); Capital Group Letter, at 3.

[25] State Street Letter, at 2. *See also, e.g.,* Virtu Letter, at 3; Fidelity Letter, at 3; Nasdaq Letter I, at 9; Cboe Letter I, at 15–16. *See also* Nasdaq Letter III, at Exhibit A (providing graphs using data from September 2018 on average quoted spread across exchanges in S&P 500 stocks and time at the best quote across those stocks). *But cf.* Larry Harris Letter, at 6–9 (acknowledging that ''quoted spreads are narrower under maker-taker pricing,'' but opining that ''the narrower quoted spreads do not benefit the public'').

[26] Magma Letter, at 3. *See also, e.g.,* NYSE Letter IV, at 2 (arguing that ''pricing incentives enhance the quality and reliability of display markets''); FIA Letter, at 4.

[27] FIA Letter, at 3–4. *See also* NYSE Letter I, at 6 (stating that rebates ''allow liquidity providers to quote narrower spreads by providing another source of revenue''); Grasso Letter, at 4 (''the main outcome of exchange pricing seems to be that it forces exchanges to compete for customers,'' because it ''keeps their margins tight and gives them incentives to improve the quality of their offerings'').

[28] *See, e.g.,* Joint Asset Managers Letter, at 2; Brandes Letter, at 2; Themis Trading Letter I, at 3; AJO Letter, at 1–2; OMERS Letter, at 2; Copeland Letter, at 2; Virtu Letter, at 6; Nuveen Letter, at 2; BlackRock Letter, at 1; RBC Letter I, at 3; Vanguard Letter, at 2; CFA Letter, at 4; Wellington Letter, at 2; Joint Pension Plan Letter, at 2; Oppenheimer Letter, at 2; Clearpool Letter, at 5 n.8; TD Ameritrade Letter, at 4; Capital Group Letter, at 3; Healthy Markets Letter I, at 10; Morgan Stanley Letter, at 3 n.5; AGF Letter, at 1.

[29] AJO Letter, at 1–2.

[30] *See* RBC Letter I, at 3–4.

[31] Capital Group Letter, at 3. *See also, e.g.,* Clearpool Letter, at 5 n.8; Oppenheimer Letter, at 2; Brandes Letter, at 2; Copeland Letter, at 2.

[32] *See, e.g.,* Cboe Letter I, at 28.

[33] *See* Proposing Release, *supra* note 2, at 13014. As discussed in the Proposing Release, the term ''trading center'' as used there and throughout this release is a collective term that refers broadly to the venues that trade NMS stocks. *See id.* at 13009 n.7. For purposes of this release, the term ''trading center'' includes national securities exchanges that are registered with the Commission and that trade NMS stocks (referred to herein as ''equities exchanges'' or ''exchanges''), as well as other types of ''non-exchange venues'' that trade NMS stocks, including ATSs and broker dealers that internalize orders by matching them off-exchange with reference to the national best bid and offer.

[34] *See, e.g.,* Brandes Letter, at 2; AJO Letter, at 2; MFA Letter, at 2; BIDS Letter, at 1–2; BlackRock Letter, at 1; SIFMA Letter, at 5; Virtu Letter, at 6; Fidelity Letter, at 10; Citi Letter, at 2; Clearpool Letter, at 4–5; Luminex Letter, at 1; Morgan Stanley Letter, at 3 n.5.

[35] Virtu Letter, at 6. *See also, e.g.,* SIFMA Letter, at 5; Clearpool Letter, at 5.

non-exchange trading centers are different from the fee models utilized by the equities exchanges and, as a result, concluded that excluding non-exchange trading centers was appropriate.[36] For example, one such commenter explained that ''inducements (low fees, no fees, rebates) offered by ATSs and other off-exchange venues are not universal across all broker-dealers or market participants. Instead, the fees paid (or not paid) by market participants to ATSs and other off-exchange venues are negotiated between each market participant and the trading venue,'' such that ''the number of fee permutations and inconsistencies across brokers for any single ATS could be substantial.'' [37] Still other commenters believed that excluding non-exchange trading centers from the Pilot was appropriate because ''ATSs are not protected venues, and thus free market competition among them constrains their pricing power.'' [38] One commenter supported excluding ATSs because ''there is nothing to be gained by including venues that don't have the same underlying issues that exchanges present with their rebate and 'maker-taker' pricing models.'' [39]

On the other hand, other commenters expressed concerns with omitting non-exchange venues from the Pilot.[40] One concern was that by excluding non-exchange venues, the Pilot data would be incomplete. For example, one commenter believed that excluding non-exchange venues ''could create an imperfect picture of the overall impact of the transaction fees put in place under the Pilot program'' and could compromise the value and utility of the data collected during the Pilot. [41] Another commenter argued that by excluding non-exchange venues, the Pilot will not return ''meaningful data upon which to make informed analysis and conclusions'' because it would ''ignore off-exchange trading representing approximately 39 percent of total U.S. equities market trading.'' [42] This commenter further believed that the Pilot would be unable to properly assess the potential conflicts of interest because it will not know ''the baseline for remuneration occurring off-exchange, or know what impact the Proposal has on that baseline[.]'' [43] One commenter objected to excluding ATSs ''based on the fact that the proposed Pilot is a 'new regulatory regime' for ATSs . . . .'' [44] While one commenter recognized the complexity involved with subjecting non-exchange trading centers to the access fee cap under Rule 610(c), it argued that such complexity did not provide a sufficient basis to treat exchanges and non-exchange trading centers disparately.[45] A few commenters recommended excluding ATSs, but requiring them to submit the required order routing data.[46]

The Commission believes that excluding non-exchange venues from the Pilot should not negatively impact the Pilot's data or impact its results. As noted above, the Pilot is designed, among other things, to assess the effects of exchange fee models. Because exchange fee models are materially different both in their structure and regulatory treatment, the potential effects that may be associated with exchange fee models are not applicable in the same manner to ATSs. Similarly, the question of whether rebates narrow the quoted spread is inapplicable to ATSs, which do not publicly display an automated quotation. Further, ATS activity is not being overlooked as increases or decreases in ATS volume during the Pilot will be reflected in other existing data sources. Accordingly, Commission researchers (hereinafter ''researchers'') will be able to assess market-wide changes in order flow during the Pilot.

Further, even if non-exchange venues provided order routing data pursuant to the Pilot, researchers would be unable to meaningfully correlate changes in an ATS's order flow with the fees of that ATS because those fees are bespoke, typically bundled, and are not as transparent as exchange fees.[47] Exchange fees are not only fully transparent in published fee schedules, but exchange fee changes must be filed with the Commission and thus they have a precise effective date attached to each filing. This level of transparency for exchange fees and rebates, which is not present for ATSs,[48] is an important component facilitating researchers' ability to draw causal connections with the Pilot's results. While obtaining order routing data from ATSs might provide interesting insight into their business, it could not be meaningfully correlated with ATS fees and fee changes and is not necessary to study the Pilot's results. Rather, existing sources of data on ATS activity, including data published by the Financial Industry Regulatory Authority (''FINRA''), will permit researchers to observe changes in ATS activity during the Pilot.

Among commenters critical of excluding non-exchange venues, some believed it could raise competitive issues to apply the Pilot's pricing limitations to the equities exchanges, but not impose the same pricing limitations on non-exchange trading centers that trade the same equities securities.[49] One exchange commenter found it ''inexplicabl[e]'' that the Pilot ''focuses only on exchanges and entirely ignores off-exchange venues, which are the venues that are most likely to benefit from a pilot that pointedly decreases the incentive (*i.e.,* rebates) to post protected quotes on-exchange.'' [50]

Several commenters suggested that the exclusion of non-exchange trading centers from the Pilot could ''create incentives for market participants to move more order flow to off-exchange platforms,'' thereby putting the national securities exchanges at a competitive disadvantage as compared to off-exchange trading centers.[51] However, a

[36] *See, e.g.,* Morgan Stanley Letter, at 3 n.5 (stating that ''many broker-dealer[ ] operators of ATSs generally charge clients an overall commission rate (rather than an access fee) for a bundle of services, including access to their ATSs''); BIDS Letter, at 1–2, AJO Letter, at 2; Healthy Markets Letter I, at 10.

[37] AJO Letter, at 2.

[38] Citi Letter, at 2. *See also, e.g.,* Fidelity Letter, at 10 (stating that ''ATS' fee structures are already subject to competitive market forces and have more complex pricing models than exchanges[,] making their participation in the Proposed Pilot less useful''); SIFMA Letter, at 5 (opining that ''competitive forces already push access fees [at ATSs] to an appropriate level . . . lower than the access fees charged by exchanges,'' because ATS access fees ''are included in the total cost consideration of trading'').

[39] Luminex Letter, at 1.

[40] *See, e.g.,* Nasdaq Letter I, at 2, 5–7; Cboe Letter I, at 12–13; MFS Letter, at 2; RBC Letter I, at 4; ASA Letter, at 3; ViableMkts Letter, at 2; Angel Letter II, at 2.

[41] *See* Wellington Letter, at 2 (acknowledging, however, that it is ''impractical for the Commission to include off-exchange venues''). *See also, e.g.,* RBC Letter I, at 4; ProAssurance Letter, at 2.

[42] Nasdaq Letter I, at 2, 5–7. *See also, e.g.,* NYSE Letter I, at 2.

[43] *See* Nasdaq Letter I, at 7.

[44] *See, e.g.,* Cboe Letter I, at 13.

[45] *See* NYSE Letter I, at 7–8.

[46] *See, e.g.,* Better Markets Letter, at 8.

[47] As noted by several commenters, equities exchanges and non-exchange trading centers currently employ different fee models. While equities exchanges charge transaction-based fees, non-exchange trading centers may not charge separate transaction-based fees, but instead may use bundled pricing such that a particular order is not necessarily associated with a particular fee. *See, e.g.,* Morgan Stanley Letter, at 3 n.5 (stating that ''many broker-dealer[ ] operators of ATSs generally charge clients an overall commission rate (rather than an access fee) for a bundle of services, including access to their ATSs''); BIDS Letter, at 1–2, AJO Letter, at 2. *See also* Proposing Release, *supra* note 2, at 13016. The Commission is not aware of any ATSs that currently pay transaction-based rebates.

[48] *See supra* notes 310–312 and accompanying text (discussing recent amendments to Regulation ATS and their relevance to the proposed Pilot).

[49] *See, e.g.,* ASA Letter, at 3; Cboe Letter I, at 12, 26–27; Nasdaq Letter I, at 5–7; NYSE Letter I, at 3–8.

[50] *See* Cboe Letter I, at 12. *See also* Nasdaq Letter I, at 6; NYSE Letter I, at 3–5; NYSE Letter II, at 12.

[51] *See, e.g.,* Wellington Letter, at 2; Oppenheimer Letter, at 3; Angel Letter II, at 2; Nasdaq Letter I, at 6–7; Cboe Letter I, at 12; NYSE Letter I, at 3–5; Curtiss-Wright Letter, at 1; ASA Letter, at 3.

commenter suggested the opposite could happen and that the Pilot might actually ''encourage more order flow to gravitate to the exchanges'' because the Pilot would reduce the access fee cap on the equities exchanges thereby making it less expensive to transact on an exchange.[52]

The Commission does not believe that the Pilot necessarily will put the equities exchanges at a competitive disadvantage or disproportionally harm them when competing with non-exchange trading centers for investors' orders. Currently, only exchanges are subject to the Rule 610(c) fee cap, and Test Group 1 is designed to test a lower cap. The Commission does not believe that exchanges charging lower fees will necessarily make them less competitive with other venues for natural order flow, for example order flow that removes liquidity. Rather, it is possible that lower fees in Test Group 1 across all exchanges may actually improve their competitive position in attracting that order flow,[53] particularly with respect to fee sensitive routing algorithms because, all else being equal, fee sensitive algorithms generally seek to minimize trading costs and would likely rank exchanges more favorably in their routing tables when exchanges reduce their fees to remove liquidity.

In addition to testing a lower fee cap level, the Pilot also will test a prohibition on rebates and ''Linked Pricing,'' which, as discussed further below, is defined as a discount or incentive on transaction fee pricing applicable to removing (or providing) liquidity that is linked to providing (or removing) liquidity.[54] The intent of this is to gather data to assess, among other things, the effect of exchange rebates. Potential distortions, which may be caused or exacerbated by exchange rebates, may themselves be placing exchanges at a competitive disadvantage, in which case the elimination of rebates could improve the competitive position of exchanges, for example if taker fees are set at levels independent of the need to subsidize maker rebates. Once again, data is needed to empirically assess this issue, and the Commission believes that the Pilot is the best way to obtain that data.[55]

Further, while exchanges may compete with non-exchange trading centers for order flow, exchange fees and the fees of non-exchange trading centers are treated very differently under the federal securities laws. Indeed, one of the distinguishing features of registered national securities exchanges is that—unlike non-exchange trading centers—their fees are subject to the principles-based standards set forth in the Exchange Act, as well as the rule filing requirements thereunder. In particular, the federal securities laws require the entirety of each and every fee, due, and charge assessed by an exchange to be transparent and publicly posted for all to see, and must be an equitable allocation of reasonable dues, fees and other charges and not be unfairly discriminatory.[56] On the other hand, similar requirements do not apply to the fees of non-exchange trading centers that do not provide public transparency into their full itemized fee schedules and typically are individually negotiated on a customer-by-customer basis.[57] By including all equities exchanges regardless of fee model, and excluding other types of trading centers, the Pilot is designed to include all trading centers whose fees are subject to the principles-based standards set forth in the Exchange Act as well as the rule filing requirements thereunder.[58] Thus, the Pilot will produce data to empirically evaluate the effects that transaction-based fees and rebates may have on, and the effects that changes to those fees and rebates may have on, order routing behavior, execution quality, and market quality more generally.

The Commission believes that subjecting non-exchange trading centers to the Pilot would go beyond the scope of the current regulatory framework that applies only to exchanges and would not further the Commission's evaluation of the impact of the existing regulatory regime, including, but not limited to, the Regulation NMS fee cap, which applies exclusively to exchange fees and rebates. In effect, the Pilot will help the Commission carry out its statutory responsibility to assess the effect of exchange fees and rebates, which do not apply to non-exchange trading centers.[59]

5. Options Exchanges

Finally, the Commission proposed to exclude options exchanges from the Pilot, because options and equities are materially different types of securities. In addition, the access fee cap under Rule 610(c) does not currently apply to the options exchanges.[60]

Several commenters agreed with the Commission's exclusion of the options exchanges.[61] No commenters suggested that the Commission include options markets in the Pilot. For the reasons noted above and discussed in the Proposing Release, the Commission is not including options markets within the scope of the Pilot.[62]

B. Securities

As proposed, all NMS stocks[63] that meet specified initial and continuing minimum standards would be eligible for inclusion in the Pilot (collectively, ''Pilot Securities'').[64] The Commission received a number of comments regarding the scope of Pilot Securities to be included in the Pilot.

1. The Share Price Threshold of Pilot Securities

The Commission proposed that an NMS stock must have a minimum initial share price of $2 at the time the pre-Pilot Period commences to be included in the Pilot and that any Pilot Securities that close below $1 at the end of a trading day during the proposed Pilot would be removed from the Pilot.[65]

[52] *See, e.g.,* Citi Letter, at 2; Decimus Letter, at 5–6.

[53] *See, e.g.,* Citi Letter, at 2; Decimus Letter, at 5–6. *See* also, *infra* Section IV.D ''Impact on Efficiency, Competition and Capital Formation'' and note 782 *infra* and accompanying text.

[54] *See* Rule 610T(a)(2).

[55] *See infra* Section IV.A.2. and C.1.a.i.

[56] *See* 15 U.S.C. 78f(b)(4)–(5).

[57] All exchange fee changes are published for public comment and required to be publicly posted on the internet, whereas fees of non-exchange trading centers are typically bespoke. Fee changes of non-exchange trading centers are not subject to the provisions of the federal securities laws requiring that fees be an ''equitable allocation'' of ''reasonable'' fees and not ''unfairly discriminatory.''

[58] *See* 15 U.S.C. 78f(b)(4)–(5) (requiring, among other things, that an exchange's fees be an ''equitable allocation'' of ''reasonable'' fees and that they not be ''designed to permit unfair discrimination.''). In addition, only exchange fees are subject to the rule filing requirements under Section 19(b) of the Exchange Act and 17 CFR 240.19b–4 (Rule 19b–4) thereunder. *See also* Proposing Release, *supra* note 2, at 13016.

[59] While exchange fees are filed with the Commission on Form 19b–4 and the Commission publishes notice of them for public comment and has an opportunity to summarily suspend them within 60 days, the Commission's non-action on a fee filing within that period does not constitute an endorsement or approval of an exchange fee. Issues with fees and how they impact market participants and market structure may or may not be obvious at first and adverse effects may take time to manifest as the market adjusts to a new fee. The Commission, and the exchanges as self-regulatory organizations, must enforce their rules and the federal securities laws with the goal of protecting investors and the public interest.

[60] *See* Proposing Release, *supra* note 2, at 13015.

[61] *See, e.g.,* MFA Letter, at 2; SIFMA Letter, at 5; Fidelity Letter, at 10.

[62] *See* Proposing Release, *supra* note 2, at 13015.

[63] *See* 17 CFR 242.600(b)(47) (defining ''NMS stock'').

[64] *See* Proposing Release, *supra* note 2, at 13017. *See also* Proposed Rule 610T(b)(1)(ii).

[65] *See* Proposing Release, *supra* note 2, at 13017; Proposed Rule 610T(b)(1)(ii). The Commission notes that the proposed language in Rule 610T(b)(1)(ii) has been modified slightly. As proposed, Rule 610T(b)(1)(ii) contained the phrase

Continued

One commenter opposed the $2 initial minimum share price threshold as overly restrictive.[66] Other commenters, however, agreed that the securities in the Pilot should have an initial minimum $2 per share price threshold at the time of the initial stock selection, because this threshold ''will capture virtually all NMS stocks while minimizing the risk that securities will drop out of the Pilot . . . .'' [67] One of these commenters believed the proposed thresholds would ''help ensure consistency among the Test Groups and limit the risk of data anomalies due to changes in the composition of those groups.'' [68] Another commenter noted that the choice of ''$2 and $1 thresholds . . . follows the reasonable parameters established during [the] . . . Tick Size Pilot'' and asserted that the ''determination to pull out securities that close at under $1 during the pilot seems appropriate, especially given the fundamentally different fee structures applicable to stocks with prices less than $1.00.'' [69]

The Commission continues to believe that the proposed share price thresholds for Pilot Securities are appropriate. The Commission notes that no commenters opposed the proposed $1 minimum continuing price threshold, which will exclude such stocks from the Pilot because stocks with quotations of less than $1 are subject to different regulatory and fee treatment.[70] The Commission continues to believe that an initial $2 share price threshold will best balance the need to include a broad set of NMS stocks in the Pilot with the desire to ensure that substantially all of the securities selected at the outset of the Pilot remain part of their respective Test Groups throughout the duration of the Pilot, including during the pre- and post-Pilot periods. The Commission does not believe that the $2 threshold is overly restrictive because, as discussed in the Proposal, it is uncommon for securities priced at $2 or more to fall below $1.[71] Lowering the initial stock selection threshold below $2 could increase the likelihood that securities selected for the Pilot get dropped from the Pilot if their share price closed below $1 during the Pilot. Such a result would change the composition of the Test Groups during the Pilot, which might adversely impact the quality of the data produced by the Pilot. For these reasons and the reasons discussed in the Proposing Release, the Commission adopts as proposed the share price thresholds set forth in Rule 610T(b)(1)(ii).

2. The Duration of Pilot Securities

The Commission proposed that, in order to be included in the Pilot, an NMS stock must have an unlimited duration or a duration beyond the end of the post-Pilot period in order to be included in the Pilot.[72] No comments were received regarding this condition. For the reasons outlined in the Proposing Release, the Commission adopts this aspect of the Pilot as proposed.[73]

3. Selecting Pilot Securities From All NMS Stocks

The Commission proposed to select Pilot Securities from among the entire universe of NMS stocks, subject to the minimum share price threshold and duration requirements. As proposed, the Pilot would include a broad and diverse cross-section of securities, including, for example, stocks of all market capitalizations as well as ETPs.

The Commission received comments on the universe of Pilot Securities that generally fell into four categories: (1) The inclusion of stocks with market capitalizations below $3 billion, (2) the inclusion of ETPs, (3) the inclusion of Canadian interlisted stocks, and (4) the inclusion of NMS stocks other than stocks of operating companies and ETPs. Each of these points is discussed below.

a. Market Capitalization and Liquidity

The Commission proposed to select Pilot Securities from among NMS stocks of all market capitalizations.[74] A few commenters recommended that the Pilot exclude securities with smaller market capitalizations and/or thinly-traded securities. One commenter suggested that the ''majority of securities within the Test Groups should be more liquid'' and that thinly-traded securities, if included, ''should be a minority of all securities in the Test Groups.'' [75] Similarly, one exchange commenter stated that the Pilot ''should exclude less active stocks as the liquidity in such stocks will likely be severely and negatively impacted by this Pilot.'' [76] This commenter asserted that ''[l]ess active stocks are highly dependent on professional liquidity providers to post liquidity'' and speculated that ''[d]ecreasing incentives for liquidity providers to post liquidity in less active stocks will have a pronounced impact on liquidity . . . manifest[ing] in significantly wider spreads and significantly less depth in these securities.'' [77] Noting that ''many industry participants appear to advocate for increased incentives for liquidity provision in thinly-traded stocks,'' the commenter did not believe that the Pilot's goals were ''worth the risk to liquidity and capital formation that the Commission itself identifie[d.]'' [78]

Another commenter was similarly concerned that the Pilot would ''have a significant impact on small to medium issuers since exchanges will not be able to provide incentives to market makers to support trading in those companies' securities.'' [79] This commenter stated that ''[l]iquidity rebates can be critical for such securities to motivate market makers to support the stock with aggressive and actionable quotations.'' [80] Further, the commenter opined that the Pilot would ''risk damaging companies' ability to efficiently raise capital,'' which it believed would ''particularly harm small and medium sized companies, for which the current market structure is already not

''minimum initial share price of at least $2 . . . .'' As adopted, the clause ''minimum initial share price of $2'' is being substituted for the phrase ''minimum initial share price of at least $2'' to delete redundant text. In addition, as proposed, Rule 610T(b)(1)(ii) explained that a Pilot Security that closes below $1 would be ''removed from the Test Group or the Control Group and will no longer be subject to the pricing restrictions set forth in (a)(1)–(3). . . .'' As adopted, this language is being modified slightly to make it more concise. Accordingly, as adopted, this language provides that if the share price of a Pilot Security closes below $1 at the end of a trading day ''it will be removed from the Pilot.''

[66] *See* Angel Letter I, at 2.

[67] RBC Letter I, at 5. *See also, e.g.,* Better Markets Letter, at 6; Healthy Markets Letter I, at 11–12.

[68] RBC Letter I, at 5.

[69] Healthy Markets Letter I, at 12.

[70] *See* Proposing Release, *supra* note 2, at 13017.

[71] *See id.* at 13017 n.102 (noting that only 4.3% of publicly traded common stocks and ETPs with a share price above $2 during 2012–2016 dropped below $1 in that period).

[72] *See* Proposing Release, *supra* note 2, at 13017; Proposed Rule 610T(b)(1)(ii).

[73] *See* Proposing Release, *supra* note 2, at 13018 n.103.

[74] *See id.* at 13018. The EMSAC's recommendation was to limit a pilot to stocks above $3 billion in market capitalization in order to avoid overlap with the Tick Size Pilot. *See id.* The Commission notes, however, that the Tick Size Pilot ended on September 28, 2018 and the Pilot Period for the Transaction Fee Pilot will not start before the post-pilot period for the Tick Size Pilot ends on April 2, 2019. *See* Section II.C.3. *infra.*

[75] RBC Letter I, at 6. *See also, e.g.,* Harris Letter, at 1; T. Rowe Price Letter, at 4.

[76] Cboe Letter I, at 28.

[77] *Id. See also, e.g.,* Morgan Stanley Letter, at 4; Leaf Letter, at 1.

[78] Cboe Letter I, at 19. *See also, e.g.,* Proposing Release, *supra* note 2, at 13069.

[79] Nasdaq Letter I, at 8–9.

[80] *Id.* at 3, 9 (alleging that the Pilot was ''arbitrary and capricious and not in accordance with law,'' because it gave ''short shrift'' to these concerns). *See also* Virtu Letter, at 7 (expressing concern that the Pilot would ''harm investors in . . . less liquid ETPs, which will be faced with less liquidity and wider spreads when they seek to sell their holdings'').

optimized.'' [81] The commenter further argued that ''incentives (rebates) are important to creating two-sided markets across all stocks, especially thinly traded stocks.'' [82]

Many other commenters supported including a broad scope of Pilot Securities. For example, a group of twenty-one asset managers submitting a joint letter stated that ''[a]s many NMS stocks as possible should be in scope, including those with market capitalizations below $3bln,'' in order to create a ''meaningful'' dataset.[83] Another commenter agreed that the Pilot ''should encompass the broadest universe of securities, as is feasible, in order to maximize the sample size and provide the most robust dataset possible,'' further arguing that ''[o]mitting securities of a specific market cap seems arbitrary, would provide an incomplete view of the overall market, and runs the risk of excluding meaningful data and biasing the study.'' [84]

Building on these arguments, other commenters believed it was important to specifically ''test the argument that rebates are required to promote liquidity provision in illiquid stocks.'' [85] One commenter noted that this debate ''has raged for years,'' which is ''the point of the pilot: To provide market participants and the Commission with the data needed to make those analyses.'' [86] Another commenter similarly asserted that the Pilot should include a broad set of NMS stocks to ''help settle academic debates on the relative impact of rebates on liquid vs. less-liquid stocks and other supposedly beneficial aspects of rebates.'' [87]

Notably, some of these commenters directly challenged the argument, set forth by a number of other commenters, that thinly-traded or smaller-capitalization NMS stocks would be harmed by the Pilot's pricing restrictions. One commenter explained that, ''for less liquid stocks, spreads tend to be wider, and as a result rebates become less relevant as a matter of simple mathematics.'' [88] To illustrate the point, the commenter referred to a ''stock that typically trades at a five-cent quoted spread,'' noting that a ''typical .0025 per share rebate would equal *one-twentieth* of the quoted spread, so in these instances a market maker's revenue from capturing the spread would far outweigh the contribution of the rebate'' [89] (emphasis in original). Another commenter also questioned the ''significance of liquidity rebates for making markets in less liquid/smaller-cap stocks,'' because it believed this ''marginal incentive to provide liquidity . . . is likely to be weak in the smaller-cap space typically characterized by wide bid-ask spreads . . . .'' [90] To support this argument, the commenter referred to ''an empirical study of changes in maker-taker arrangements on two European trading venues owned by BATS,'' now owned by Cboe Global Markets, which suggested that '' 'an elimination of the make fee and a reduced take fee cap would result in worse market quality for large capitalization stocks but *better market quality for small capitalization stocks*' '' (emphasis in original).[91] For this reason, the commenter asserted that the ''link articulated by the opponents of the proposed pilot is at best uncertain and that the pilot *may* in fact result in improved liquidity for smaller-cap stocks'' (emphasis in original).[92] The commenter therefore contended that it was ''imperative to include a set of smaller-cap stocks in the pilot, as the opponents' claims on the existence of unambiguous harm to liquidity appear to be exaggerated and driven by preconceived notions.'' [93]

The Commission believes that the many commenters have, through their analysis and ultimate disagreement on this issue, emphasized the need for the Pilot to test the effect of transaction fees and rebates on NMS stocks of all market capitalizations. It is unclear whether or not changes to fees and rebates would harm smaller capitalization or thinly-traded NMS stocks.[94] As some commenters have noted, it also is possible that the Pilot may have little effect on smaller-capitalization or thinly-traded NMS stocks or that the Pilot may even improve the liquidity of such stocks.[95] The Commission also notes that a pilot focused solely on large capitalization stocks may not produce sufficient data to investigate how changes to transaction fees and rebates will affect liquidity or capital formation across the market. Because including smaller-capitalization NMS stocks in the Pilot will produce a more meaningful dataset to support a broad investigation into the effect of transaction fees and rebates on the full spectrum of NMS stocks and among different segments of the securities market, the Commission adopts this aspect of the rule as proposed.

As discussed further below, notwithstanding the decision to include all NMS stocks regardless of market capitalization, the Commission believes it is appropriate to exclude certain thinly-traded securities (*e.g.,* securities that trade fewer than 30,000 shares per day), in part because rebates at that level of trading would be low enough to be unlikely to impact order routing behavior and researchers would be unlikely to get sufficient statistical power to analyze them in isolation at those volume levels.[96]

[81] Nasdaq Letter I, at 2. *See also* ASA Letter, at 5.

[82] Nasdaq Letter III, at 1. The commenter provided a chart showing how the exchanges compare to each other with respect to maintaining a two-sided quote at least 50% of the day. In the chart, some of the exchanges with a higher percent of two-sided markets more than 50% of the day have taker-maker pricing, in which they incentivize the removal of liquidity and charge fees to the provider of liquidity. *Id.* at Exhibit A. *But cf.* NYSE Letter II, at 9–10 (arguing that rebates are necessary to promote display of liquidity).

[83] Joint Asset Managers Letter, at 2. *See also, e.g.,* Spatt Letter, at 1–2 (stating that the Pilot was a ''very significant improvement over the EMSAC proposal'' and that one of the ''major improvements'' was ''the inclusion of lower market value stocks''); Healthy Markets Letter I, at 11–12; Wellington Letter, at 2; MFA Letter, at 2; Nuveen Letter, at 2; Lipson Letter, at 1; BlackRock Letter, at 1; Vanguard Letter, at 2; CFA Letter, at 4; CIEBA Letter, at 2; Joint Pension Plan Letter, at 2; Oppenheimer Letter, at 2.

[84] AJO Letter, at 2.

[85] Babelfish Letter, at 3.

[86] Healthy Markets Letter I, at 13.

[87] Better Markets Letter, at 6. *See also, e.g.,* Vanguard Letter, at 2 (''By including all NMS stocks, the SEC will receive data to analyze the impacts of transaction fees on market quality across various types of securities.''); TD Ameritrade Letter, at 6–7 n.11 (''including securities of small, mid and large cap companies . . . will include some data on the impact that varying transaction fees will have [on] thinly traded securities'').

[88] IEX Letter II, at 7. *See also* Credit Suisse Commentary, at 1, 3 (stating that the Pilot ''is likely to affect stocks differently depending on their liquidity profile,'' but expecting stocks ''with wider spreads'' in Test Groups 2 and 3 ''to continue to behave similarly given that their liquidity may be less driven by rebate-incentivized trading strategies to begin with''). *But cf.* NYSE Letter II, at 11 (asserting that it was ''untrue'' that ''spreads for less-liquid securities are not sensitive to rebate levels'' and referring to chart showing that NYSE American-listed securities, ''which are generally less-liquid securities'' spent less average time at the NBBO compared to maker-taker venues).

[89] IEX Letter II, at 7.

[90] Decimus Letter, at 4–5 (citing Marios Panayides et al., *Trading Fees and Intermarket Competition* 26 (Charles A. Dice Ctr. for Research in Fin. Econ., Ohio State Univ., Working Paper No. 2017–3, 2017, available at, *https://ssrn.com/abstract=2910438*).

[91] *Id.* at 5.

[92] *Id.*

[93] *Id.*

[94] *See, e.g.,* Proposing Release, *supra* note 2, at 13065–66, and 13069.

[95] *See, e.g.,* notes 88–92 *supra* and accompanying text.

[96] *See supra* Section II.C.6 (discussing the exclusion of securities that trade fewer than 30,000 shares per day on average from Test Groups 1 and 2). *See also supra* notes 88–92 and accompanying text. Accordingly, the Commission notes that many thinly-traded securities will be excluded from the Pilot, which should assuage commenters' concerns regarding the impact of the Pilot on less liquid or thinly-traded securities.

b. The Inclusion of ETPs

The Commission proposed to select Pilot Securities from among all NMS stocks, including ETPs. A number of commenters supported including ETPs in the Pilot. Several commenters noted, for example, that including ETPs ''would produce a more inclusive analysis of rebates and fees across all segments of NMS stocks.'' [97] One such commenter believed that ''the benefits from collecting data that informs long-term market structure improvements will outweigh any potential temporary disadvantage.'' [98]

On the other hand, a number of commenters expressed concern with including ETPs in the Pilot. For example, one commenter stated that ''[m]any ETP issuers are . . . strongly opposed to the inclusion of ETPs in the Pilot'' and suggested that the Commission had not ''sufficiently explained why it is appropriate to include ETPs in any Pilot.'' [99] This commenter noted that ''exchanges have implemented numerous incentive structures designed to promote liquidity and narrow spreads in ETPs'' that could be disrupted by the Pilot, ''negatively impact[ing] liquidity and spreads in ETPs to the detriment of both new and existing investors.'' [100] Similarly, another commenter expected the Pilot to ''result in spreads widening for ETPs holding pilot stocks, even if ETPs are not included in the pilot, given that fair value calculations rely on underlying constituent pricing,'' and therefore cautioned that ''any negative effects of the pilot on transaction costs could be intensified for ETP investors.'' [101] A few commenters ''believe[d] that the goals of the pilot can be achieved without having to include ETPs in the pilot,'' because ''[t]he effects of the pilot on stocks will be sufficient to draw conclusions about potential changes to access fee rules.'' [102]

The Commission continues to believe that it is important to include ETPs in the Pilot, because excluding them would hamper the Commission's ability to gather key data that could be used to inform future regulatory action in this area. The Commission does not believe it will be able to draw meaningful conclusions about the impact of changes to transaction fees and rebates on ETPs by observing the effects of the Pilot on other securities, in part because ETPs have a unique create-and-redeem process that does not apply to other NMS stocks.[103] Nevertheless, ETPs are subject to the same rules and fees that apply to all NMS stocks. To the extent that the Pilot results may inform future policymaking, Pilot data that includes all types of NMS stocks that would be impacted, including ETPs, will be more useful.

Further, some commenters expressed concern regarding the potential for competitive effects among certain ETP issuers. As one commenter noted, ''if two ETPs with similar underliers or that track the same index are placed in the two different [T]est [G]roups, the Pilot would inevitably determine winners and losers.'' [104] Another commenter explained that ''ETPs with similar investment strategies are more substitutable than stocks of operating companies,'' such that ''market quality metrics likely play a greater role in driving flows to ETPs.'' [105] For that reason, ''[i]f competing ETPs are in different test groups—and market quality varies among the test groups,'' the commenter believed that ''investors might migrate toward products in the test groups with better market quality,'' thereby ''tilt[ing] the playing field in favor of ETPs that happen to be assigned—at random—to test groups that perform better at the expense of other products.'' [106]

While a few commenters discussed which treatment group would be most problematic,[107] many of the commenters took no position on the direction of the presumed competitive impact and did not speculate about how (or whether) inclusion in specific Pilot Groups would help or harm ETPs.[108]

To address the potential competitive harm, a few of these commenters recommended that the Commission exclude ETPs from the Pilot altogether,[109] while most recommended that the Commission select ETPs in a manner that may avoid any potential competitive effects among similar ETPs, by: (1) Rotating all of the Pilot Securities through the various treatment groups,[110] (2) rotating only ETPs through the various treatment groups,[111] or (3) placing in the same Test Group ETPs tracking similar indexes or holding similar investments.[112]

Other commenters criticized these proposed alternatives for selecting ETPs. One commenter, for example, questioned ''whether any of the proposed remedies would address these concerns effectively or fairly.'' [113] Another commenter expressed concern that the suggestions to place ''similar'' ETPs in the same Test Group might be too complex to implement, as determining whether ETPs are ''similar'' to one another for purposes of Pilot rotation can be extremely nuanced.[114] This commenter explained that an ''effective classification should take into account an ETP's underlying index, portfolio constituents and asset class to provide an appropriate 'apples to apples' analysis,'' in addition to ''factors such as assets under management, spread size and daily trading volume,'' which the commenter believed ''would

[97] BlackRock Letter, at 1. *See also, e.g.,* Fidelity Letter, at 9.

[98] Vanguard Letter, at 2.

[99] Cboe Letter I, at 17–18.

[100] *Id.*

[101] State Street Letter, at 3.

[102] *See, e.g., id.*

[103] *See, e.g.,* Securities Exchange Act Release No. 75165 (June 12, 2015), 80 FR 34729, 34732 (June 17, 2015) (Request for Comment on Exchange-Traded Products) (discussing the create-and-redeem process for ETPs); Transcript of the Division of Trading and Markets' Roundtable on Market Structure for Thinly-Traded Securities (April 23, 2018), *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/thinly-traded-securities-rountable-042318-transcript.txt* (Panel Three discussing ETPs). In particular, large volumes in ETPs can be transacted directly with the ETP issuer in creation units, making the trading center volume in ETPs less relevant to institutional traders that transact in large size orders.

[104] Morgan Stanley Letter, at 3–4. *See also* Nasdaq Letter I, at 8–9 (stating that the Pilot was ''arbitrary and capricious and not in accordance with law,'' in part because the Commission had ''fail[ed] to consider'' the competitive effects of placing ''ETPs tracking similar indexes . . . in different test groups''); Cboe Letter I, at 17.

[105] ICI Letter I, at 4 n.8.

[106] *Id.* at 4. *See also, e.g.,* NYSE Letter I, at 7; Nasdaq Letter I, at 8.

[107] *See, e.g.,* Credit Suisse Commentary, at 6 (stating that the Pilot could ''unintentionally advantage ETFs in the lower fee group''). *But cf.* Nasdaq Letter I, at 8 (stating that ETPs ''in the lower rebate groups would find themselves at a competitive disadvantage to their competitors and may lose market share during the pilot as a result'').

[108] *See, e.g.,* SIFMA Letter, at 4–5; Invesco Letter, at 2–3; Morgan Stanley Letter, at 3–4.

[109] *See, e.g.,* Cboe Letter I, at 28; Invesco Letter, at 2–3; State Street Letter, at 3; STA Letter, at 4.

[110] *See, e.g.,* ICI Letter I, at 4–5, 5 n.10 (suggesting that the Commission rotate securities every three to six months); Oppenheimer Letter, at 3; Angel Letter II, at 3 (suggesting a quarterly rotation). These commenters did not believe that rotation would ''adversely affect the validity of pilot data'' or ''impose more than a *de minimis* implementation burden or other costs on market participants.'' ICI Letter I, at 4. *See also* Angel Letter II, at 3. These commenters suggested that ''[a]nalysis of individual security characteristics before and after a rotation to a new group[ ] could yield relevant and important results.'' Oppenheimer Letter, at 3. *See also* Angel Letter II, at 3.

[111] *See, e.g.,* SIFMA Letter, at 5; State Street Letter, at 4; Healthy Markets Letter II, at 8.

[112] SIFMA Letter, at 4. *See also, e.g.,* Nuveen Letter, at 2; BlackRock Letter, at 2; FIA Letter, at 4; Fidelity Letter, at 9; State Street Letter, at 4; STANY Letter, at 4; Healthy Markets Letter II, at 8. *But cf.* Angel Letter II, at 3 (stating that ''similar ETFs are probably the best natural controls for each other, as their underlying portfolios are virtually identical,'' such that ''similar ETFs should definitely be in different treatment groups to increase the power of the pilot'').

[113] Schwab Letter, at 3.

[114] Invesco Letter I, at 2–3. *See also, e.g.,* Healthy Markets Letter II, at 8 (noting that it may be ''difficult to clearly and consistently define 'similar' ETPs'').

introduce unnecessary complexity into the Proposal.'' [115]

The Commission recognizes the concern that securities placed in one treatment group could be impacted differently than similar securities placed in a different treatment group. While that effect could occur for any security (*e.g.,* stocks of different operating companies in the same industry), it could potentially be more prominent for ETPs that may be substantially similar. Nevertheless, the Commission notes that similar ETPs are not necessarily identical and many other factors influence investor demand and trading, including expense ratios, trading commissions, and existing holdings.

The Commission has carefully considered the three alternatives suggested by the commenters [116] and declines to adopt them. Rotating either (1) all Pilot Securities or (2) only ETPs would increase complexity and could increase the costs of the Pilot as the Commission, exchanges, and market participants would need to manage a pilot whose securities change treatment groups every several months. In particular, a rotation design would be considerably more complex than the proposed design by, for example, adding more treatment subgroups and requiring frequent rotation of those subgroups. Given the choice between a simple Pilot design with a short duration, on one hand, and a considerably more complex design with a longer duration, on the other hand, the Commission prefers to adopt this aspect of the rule as proposed. Compared to the alternative designs suggested by some commenters, the proposal results in a short narrowly drawn pilot with fewer complexities and burdens, which is an outcome supported by many commenters.[117]

The Commission also considered the suggestion to group ETPs with similar underlying holdings into the same treatment group. While this suggestion involves slightly less ongoing complexity than rotating securities during the Pilot, the Commission declines to adopt this suggestion because it introduces its own complexity in that categorizing ETPs according to their underlying holdings (and potentially other characteristics) involves the exercise of subjective judgment. In addition, grouping similar ETPs can negatively impact the representativeness of the different treatment groups, particularly if all of the similar ETPs are similar in volume, price, and market capitalization. The Commission believes it may learn more from a study that compares how different pricing regimes affect similarly-situated ETPs, whereas keeping similar ETPs in the same treatment groups could reduce the quality and usefulness of Pilot's results by inhibiting the ability of researchers to compare treatment groups. While the potential exists that similar ETPs in different Pilot treatment groups might trade differently during the Pilot, it is not certain—and commenters held divergent views concerning—whether and to what extent the Pilot would be a contributing factor. Whether the absence of rebates or lower fees help or hurt trading in similar ETPs is far from certain, and whether investors would base trading decisions on those distinctions is unclear. Excluding ETPs to avoid speculative harm would, however, decidedly reduce the utility of the Pilot's results to inform future policy making. Therefore, the Commission has determined not to adopt a requirement to rotate securities or to group like ETPs. For these reasons, the Commission adopts the rule as proposed to include ETPs in the Pilot.

c. The Inclusion of Canadian Interlisted Stocks

In the Proposal, the Commission requested comment on the selection criteria and whether the Commission should consider inclusion or exclusion of certain stocks from the Pilot sample set.[118] In response, several commenters discussed the inclusion of Canadian interlisted stocks in the Pilot and recommended that the Commission coordinate with Canadian securities regulators to avoid altering the trading dynamics between Canada and the U.S. in those securities.[119] For example, one commenter was ''concerned that the inclusion of Canadian interlisted stocks in either one of the reduced access fee or no rebate test groups may materially impact order flow by encouraging transactions to move away from U.S. exchanges and on to Canadian exchanges.'' [120] Other commenters suggested that the Commission coordinate with the Canadian Securities Administrators to avoid ''dramatic differences in the trading economics on inter-listed stocks between Canadian and U.S. markets.'' [121]

The Commission also received a comment letter from the academics retained by the Canadian Securities Administrators (''CSA'') to assist with planning, conducting, and analyzing a Canadian transaction fee pilot (''Canadian Pilot'').[122] According to the CSA researchers, the Canadian Pilot likely will propose that, for approximately 180 interlisted stocks, 90 of them would be included in a no-rebate test group with the remaining 90 placed in a control group.[123] In their letter, the CSA researchers requested that the Commission's Pilot treat interlisted stocks similarly to their Canadian Pilot proposal—*i.e.,* that both pilots place the same 90 interlisted stocks into their respective no-rebate group and place the other 90 stocks into their respective control group.[124] By doing so, the CSA researchers believe that both pilots will avoid confounding the analysis for each respective pilot with respect to interlisted stocks because differences in fees and rebates otherwise could incentivize shifts in cross-border routing.[125]

The Commission agrees with the CSA researchers and believes that it is appropriate to coordinate with the CSA on a transaction fee pilot in order to avoid the potential for distortionary effects between U.S. and Canadian markets if rebates in the ''no-rebate'' interlisted stocks continue to be allowed on one country's exchanges but not the other.

Accordingly, in the event that the CSA proceeds with the Canadian Pilot concurrently with the Commission's Pilot, the Commission will append to the no-rebate Test Group the same Canadian interlisted stocks that the CSA selects for its no-rebate treatment group, and the remaining interlisted stocks will

[115] Invesco Letter, at 2–3.

[116] The Commission also considered comments providing suggestions relevant to the implementation of these three alternatives. As discussed above, the Commission is not adopting the alternatives.

[117] *See* Section II.D.2 (discussing the duration of the Pilot) and Section II.C.5. through 6. (discussing the number of stocks to be included in the Pilot) *infra.*

[118] *See* Proposing Release, *supra* note 2, at 13019 (Questions #5 and 8). *See also id.* at 13013 n.46 (noting the receipt of a letter from the Canadian Security Traders Association proposing a cross-border study on the effect of rebates on market quality in conjunction with the Canadian Securities Administrators).

[119] *See, e.g.,* Fidelity Letter, at 8; OMERS Letter, at 1; FIA Letter, at 4; Healthy Markets Letter I, at 35; STA Letter, at 5. Canadian interlisted stocks are stocks of Canada-based companies that are primarily listed on a Canadian exchange (generally the Toronto Stock Exchange), but that choose to also dually-list on a U.S. exchange. *See https://www.tsx.com/trading/toronto-stock-exchange/fee-schedule/ni-23-101* (for a quarterly list of approximately 187 interlisted securities published by the Toronto Stock Exchange featuring stocks that are listed on the Toronto Stock Exchange or the TSX Venture Exchange).

[120] FIA Letter, at 4. *See also* Fidelity Letter, at 8.

[121] *See, e.g.,* STA Letter, at 5.

[122] *See* CSA Letter. The preliminary details of the pilot contemplated by the CSA, as reflected in the CSA Letter, were not publicly available prior to the Proposing Release.

[123] *Id.* at 1.

[124] *Id.* at 2.

[125] *Id.* at 1–2.

be placed into the Control Group.[126] Placing the same interlisted stocks into the Pilot's no-rebate test group that the Canadian Pilot places into its no-rebate test group will avoid the potential to alter the trading dynamics between Canadian exchanges and U.S. exchanges in those stocks that otherwise could result if not all exchanges were subject to the same conditions, which should support the integrity of the no-rebate test groups in both pilots.[127] Coordination also will avoid the potential for the Commission's Pilot to interfere with the ability of Canadian securities regulators to conduct a pilot of their own on Canadian-listed stocks which could be adversely impacted in the absence of coordination.[128] The Commission appreciates the interest expressed by the CSA researchers in coordinating on a pilot with respect to interlisted stocks, and looks forward to cooperating with the CSA on this important data-gathering initiative in a manner that benefits both nations' securities markets.

d. The Inclusion of Other Types of NMS Stocks

A few commenters addressed the inclusion of other types of NMS stocks, such as American Depositary Receipts (''ADRs''), rights, and warrants. One commenter supported the proposed broad scope of Pilot Securities and believed that ''analysis of . . . ADRs could provide additional insight into the effect rebates and fees have on liquidity, spreads and the overall trade experience.'' [129] Another commenter objected to the Commission's proposal to include rights and warrants in the Pilot, but did not explain the basis for its objection.[130] As noted above, however, most commenters expressed general support for a Pilot that includes all NMS stocks.[131]

The Commission continues to believe that it is appropriate to select Pilot Securities from among the overall universe of NMS stocks. Accordingly, the Commission will include all types of NMS stocks in the Pilot, subject to the selection criteria described below. The Commission believes this is appropriate because exchange fees and rebates apply to all NMS stocks, as does the fee cap under Rule 610(c). Aligning the scope of the Pilot with the scope of equities fees and the equities fee cap will best facilitate analysis of the impact of changes to transaction fees and rebates on different segments of the securities market. Excluding from its scope any categories of NMS stocks would deprive the Commission of data to inform future regulatory action regarding this segment of the market. For those reasons, the Commission adopts this aspect of the Pilot as proposed, subject to the selection methodology described below in Section II.C.

4. The Ability of Issuers To Opt Out of the Pilot

The Commission solicited comment as to whether issuers should be allowed to request that their securities not be included in one of the Pilot's Test Groups (*i.e.,* ''opt out'') and the potential impact that such an approach might have on the extent and quality of the data collected by the Pilot.[132]

Several commenters argued that issuers should be permitted to opt out of participation in the Pilot based on process concerns. For example, one commenter's ''largest concern [was] that the genesis of the proposal . . . deliberately excluded issuer representation'' by ''excluding the NYSE and Nasdaq from participation on the [EMSAC].'' [133] This commenter asserted that the ''exclusion . . . from participation in the pre-proposal discussions renders the 'Opt Out' option absolutely essential.'' [134] Another commenter suggested that the Commission could address such concerns by ''conven[ing] a summit for issuers and perhaps [creating] a series of webcasts . . . to explain the purpose of the test,'' as well as by ''form[ing] an Issuer Advisory Committee that can weigh data and let companies opt into or out of a test.'' [135]

The Commission's proposal was subject to a full notice-and-comment rulemaking process during which the Commission received a large number of comments from the public, including issuers and their listing exchanges. While the EMSAC recommendation was one of many inputs that informed the Commission's development of the Pilot, the Commission's Pilot differs substantially from EMSAC's recommendation as numerous commenters have recognized.[136] Accordingly, the Commission believes that issuers, as well as other market participants, have had ample opportunity to participate in the consideration of the Commission's proposal for the Pilot.

Other commenters supported opt out based on specific concerns surrounding the potential impact of the Pilot. A number of these commenters were listed company issuers that expressed concern about how the Pilot would affect trading in their securities.[137] Commenters

[126] In the event that the Canadian pilot does not go forward or does not commence simultaneously with the Commission's Pilot, interlisted stocks will be placed at the Pilot's outset into the Control Group. Placing interlisted stocks in the Control Group will preserve the status quo for interlisted stocks and avoid altering the trading dynamics in them between U.S. and Canadian exchanges, which will avoid adversely impacting Test Groups 1 and 2 with respect to those stocks. If the Canadian pilot does go forward, but the interlisted stocks that will be included in its no-rebate test group are not known by the Commission at the time the Commission issues the initial List of Pilot Securities, the Commission may separately issue a subsequent list identifying the interlisted stocks that will be appended to Test Group 2 or the Control Group for the remainder of the Pilot.

[127] *See, e.g.,* Proposing Release, *supra* note 2, at 13024 (discussing the design of proposed Test Group 3 and the prohibition in Linked Pricing to support the integrity of a no-rebate test group). *See also* CSA Letter, at 1 (expressing concern that ''the results of the Canadian Pilot may be statistically and economically inconclusive'' without coordination with the Pilot).

[128] *See* CSA Letter, at 1.

[129] Oppenheimer Letter, at 3.

[130] TD Ameritrade Letter, at 4.

[131] *See, e.g.,* Vanguard Letter, at 2; Joint Pension Plan Letter, at 2; Oppenheimer Letter, at 2.

[132] *See* Proposing Release, *supra* note 2, at 13019.

[133] Issuer Network Letter I, at 2 (emphasis omitted) and Issuer Network Letter II. *See also* Cboe Letter I, at 14–15 (criticizing the Pilot as ''based on recommendations made by a committee that, however well-meaning, was flawed in its construction'' because it lacked ''exchange or issuer representation''); Home Depot Letter, at 2 (stating that the EMSAC ''did not include any input from issuers or issuer advocates . . . like NYSE and Nasdaq'' and that it was ''difficult'' for ''issuers . . . to understand how this Pilot could be implemented without input from the issuers . . . it will directly impact''); ModernIR Email, at 1 (stating that a ''study . . . crafted without input or choice for issuers . . . would be an inexcusable travesty'').

[134] Issuer Network Letter I, at 2, 7 (emphasis omitted).

[135] ModernIR Email, at 1. *See also* Issuer Network Letter I, at 7 (suggesting that the Commission ''[p]lace the Access Fee Pilot on hold for 90 days while [it] gathers a Blue Ribbon Panel . . . of a dozen or so NYSE and Nasdaq listed company financial executives so that we might conduct a comprehensive review'' of the Pilot (emphasis omitted)).

[136] The EMSAC held meetings open to the public, which were publicly webcast, as it was developing its recommendations. To promote awareness of those meetings, the Commission issued press releases to announce those meetings, which included the agenda for those meetings. *See, e.g.,* SEC Press Release 2015–216 (announcing the agenda for an October 27, 2015 EMSAC meeting, highlighting the discussion of fees and rebates, and soliciting comments from the public thereon), *available at https://www.sec.gov/news/pressrelease/2015-216.html.* The Commission also published meeting minutes and transcripts of the full EMSAC meetings. Finally, the Commission provided a mechanism for the public to submit comments to the EMSAC for its consideration, and a number of people did submit comments. *See https://www.sec.gov/comments/265-29/265-29.shtml* (comment file for File No. 265–29).

[137] *See, e.g.,* P&G Letter, at 1; McDermott Letter, at 1; Level Brands Letter, at 1; ACCO Letter, at 1; NorthWestern Letter, at 1–2; Ethan Allen Letter, at 1; Unitil Letter, at 1; Johnson Letter, at 2; Sensient Letter, at 2; Hawaii Letter, at 1; Cott Letter, at 1; Leaf Letter, at 1–2; First Majestic Letter, at 1; SIFCO Letter, at 2; Weingarten Letter, at 1; Ennis Letter, at 2; Trex Letter, at 1; Genesis Letter, at 1; Tredegar Letter, at 1; Energizer Letter, at 1; ProAssurance

supporting opt out emphasized the importance of giving issuers the ability to avoid potential costs and uncertainty resulting from the Pilot.[138] For example, one commenter believed that the Pilot could ''caus[e] spreads to widen in securities selected for the test groups,'' such that ''companies conducting a repurchase program or secondary offering would incur higher costs,'' and the Commission received a number of comment letters from listed issuers specifically referencing that point and echoing the same concerns.[139] This commenter further argued that ''the Proposal would also harm the ability of issuers whose securities are subject to access fee caps to compete'' with issuers not subject to the Pilot's exchange fee restrictions.[140]

Many other commenters opposed opt out.[141] Some of these commenters dismissed the concerns described above regarding the potential costs on issuers whose stock is included in the Pilot.[142] For example, one commenter disagreed with the notion that ''rebates are needed to incentivize market makers to quote tight spreads'' in the stocks of certain issuers who had submitted comment letters.[143] This commenter explained that the ''fifth of a cent rebate is not incentivizing a tight bid-ask spread in these issuers' stocks,'' because that rebate represents an insignificant portion of their average spread.[144] Another commenter disagreed with the suggestion that the Pilot would have a negative impact on issuers, arguing that such position ''directly contradicts the public support by investors for the Pilot.'' [145] This commenter opined that the ''fundamental forces of supply and demand that affect . . . the relative attractiveness of individual public company stocks will be in no way impaired if . . . exchanges are precluded from paying a rebate, or required to accept a lower access fee.'' [146]

Other commenters asserted that opt out would ''adversely affect the quality of the data and the credibility of the Pilot,'' which could weaken the findings that could be drawn from it.[147] One commenter explained that opt out ''would undercut the ability of economists to draw sharp inferences based upon performance differences between the treated and control stocks'' and that the ''non-random character of 'opt outs' '' could ''disproportionately reflect firms that were especially responsive to feedback from the listing exchange or could disproportionately reflect less liquid stocks, which would be especially important for the access fee pilot.'' [148]

One listed issuer, which is a large investment manager, ''welcome[d] the opportunity for [its] stock to be included in the Pilot, with the ultimate goal of improving the overall market to be one where prices can be set by long-term investors without distortion from speculative market participants.'' [149] This issuer did not ''expect that a reduction or outright removal of rebates will have any significant or harmful effects on the quality of prices displayed in the public lit market, interfere with genuine liquidity and price formation, or negatively impact [its] stock's trading volume, spread or displayed size.'' [150]

Finally, two commenters further argued that opt out would be inconsistent with the existing market structure. One of these commenters observed that ''[i]ssuers currently have no say over exchanges' policies'' and that ''exchanges that modify their access fees dozens of times a year do not survey issuers or permit them to opt-out of these fee changes or creation of order types.'' [151] The other commenter opined that opt out ''may set an unfortunate precedent that would allow an issuer to pick and choose among those aspects of the National Market System that it likes while rejecting other aspects that it may find less attractive to it, but [which] are necessary to the smooth functioning of [the] United States public equity markets.'' [152]

After careful consideration, the Commission does not believe that issuers should be permitted to opt out of participation in the Pilot. While the Commission understands issuers' concerns, allowing issuers to opt out could undermine the representativeness of the Pilot's treatment groups and potentially bias the Pilot's results, depending on the number and characteristics of issuers that opt out. In turn, researchers would be less able to rely on the data to perform analyses and draw specific conclusions about the impact of the Pilot, thereby limiting the usefulness of the Pilot's data to the Commission and future regulatory initiatives.[153] Although some commenters believe that issuers may incur potential costs or endure competitive harms depending on which of the Pilot's treatment groups their stock is in, other commenters have argued that such effects are unlikely to manifest. The Commission does not believe it is appropriate to implement an opt out provision that could frustrate the collection of useful and representative data based solely on concerns expressed by some commenters regarding uncertain harms. It is precisely because of this uncertainty that the Commission believes it is necessary to conduct the Pilot to study these contested issues through an objective empirical review of exchange transaction fees and rebates. For those reasons, the Commission

Letter, at 1; Home Depot Letter, at 1; SMP Letter, at 2; Halliburton Letter, at 1; Era Letter, at 2; Natural Grocers Letter, at 2; Newpark Letter, at 2; Knight-Swift Letter, at 2; Farmer Mac Letter, at 1; BancorpSouth Letter, at 1–2; Haverty Letter, at 1; Ampco-Pittsburgh Letter, at 2; Anixter Letter, at 2; Avangrid Letter, at 2; NHC Letter, at 1; HP Letter, at 2; Curtiss-Wright Letter, at 2; Murphy Letter, at 1.

[138] *See, e.g.,* Cboe Letter I, at 29; ASA Letter, at 4–5.

[139] *See* Addendum to Healthy Markets Letter II, at 11 (attaching an email from NYSE to its listed companies). *See also* note 137 *supra.*

[140] *See* NYSE Letter I, at 4. In its letter, the commenter mentioned analysis it performed on NYSE-listed issuer secondary offerings in 2017 that suggested that issuers ''with average spreads under 20 basis points paid an average discount to market price of 2.6%'' and that ''companies with spreads above 20 basis points had to discount their offerings nearly twice as much, to 4.9%.'' NYSE Letter I, at 14 n.51. It is unclear, however, whether wider spreads *cause* larger offering discounts or whether they are simply *correlated* with them. For example, smaller companies that are less well capitalized may have a wider spread compared to a larger, better capitalized company, which could result in spreads being correlated with a company's cost of capital (*i.e.,* wider spreads could be a reflection of a company's relative credit risk and cost of capital, not a driver of it).

[141] *See, e.g.,* Joint Asset Managers Letter, at 2; Citi Letter, at 5; AJO Letter, at 2; Lipson Letter, at 1.

[142] *See supra* notes 138–140 and accompanying text.

[143] Themis Trading Letter II, at 3.

[144] *Id.* at 2–3.

[145] IEX Letter II, at 3. *See also, e.g.,* Joint Pension Plan Letter, at 2 (stating that the ''asset manager/asset owner community is heavily supportive of such a pilot,'' which should ''provide the necessary confidence to all public companies to be included''); ICI Letter II, at 2 (''market structure is not a primary consideration guiding the investment decisions of long-term investors''); Joint Asset Managers Letter, at 2; Healthy Markets Letter II, at 2. *But cf.* NYSE Letter II, at 4 (stating that ''many buy-side institutions'' supporting the Pilot ''are willing to experiment with real-world public companies and end investors to 'get the data,' even if the expected impact of limiting or eliminating rebates will be a deterioration of the public quote'').

[146] IEX Letter II, at 3–4.

[147] RBC Letter I, at 6. *See also, e.g.,* LATEC Letter, at 2; Joint Pension Plan Letter, at 2; MFS Letter, at 3; Clearpool Letter, at 8.

[148] Spatt Letter, at 3. *See also, e.g.,* Healthy Markets Letter I, at 12; CII Letter, at 4.

[149] T. Rowe Price Letter, at 4. The issuer explained that its stock, ''on average, trades about 1.5 million shares daily, with an average displayed size of 200 shares and a spread of nearly $0.07,'' with ''40% of [its] average daily volume occur[ring] as displayed on exchange volume.'' *Id.* at 4–5.

[150] *Id.* at 5.

[151] Better Markets Letter, at 7.

[152] MFS Letter, at 3.

[153] *See, e.g.,* Short Sale Position and Transaction Reporting, Study by the Staff of the Division of Economic and Risk Analysis, June 5, 2014, at 66–67 (discussing selection bias in the context of an ''opt in'' voluntary pilot design).

adopts this aspect of the Pilot as proposed.

C. Pilot Design

1. Need for a Pilot

As a threshold issue, commenters disagreed about whether the Commission should conduct any kind of pilot study of transaction fees and rebates. One commenter, for example, characterized the proposed Pilot as ''a solution in search of problem'' and claimed that the Commission ''has provided no evidence that existing fee practices are harming investors or interfering with fair competition.'' [154] Another commenter believed that the Pilot was unnecessary, but for the opposite reason—namely, that there is ample evidence of the negative effects of exchange rebate pricing models, such that the Commission should instead take immediate action to ban them.[155]

Most commenters, however, thought a Commission-led pilot was necessary and supported the Commission's proposal to conduct one.[156] These supportive commenters observed that ''market participants have heavily debated the effects that transaction-based fees, particularly access fees, and rebates may have on the equity markets'' and ''commend[ed] the SEC for advancing this discussion through a time-limited, empirical study.'' [157] Some of those commenters thought a Commission-led pilot was necessary because competitive pressures among exchanges may serve as a barrier to market-led reforms in this area.[158] The Commission agrees with the commenters that stated that the Pilot is necessary because, as reflected in the comments discussed above,[159] there is strong disagreement about the impact of exchange fee-and-rebate pricing models but a lack of data to study the issue. The Commission believes it is important to further investigate these impacts.[160]

2. Pilot Design

For each NMS stock that meets the initial criteria to be a Pilot Security, discussed above, the Commission proposed to assign it to one of three Test Groups, with 1,000 NMS stocks each, or the Control Group.[161] The composition of each Test Group would remain constant for the duration of the Pilot, except, as described below, to reflect changes to the composition of the groups caused by mergers, delistings, or removal from a Test Group due to the share price of a stock closing below $1.[162]

The Commission received a number of comments on the proposed Pilot design, discussed below, focusing mainly on the number of securities included in each Test Group. After consideration of all the comments received and for the reasons discussed below, the Commission is adopting two Test Groups that each contain 730 NMS stocks, functionally combining proposed Test Groups 1 and 2 into a new Test Group 1 with a blended fee cap of $0.0010. Accordingly, for the duration of the Pilot, the following pricing restrictions will apply to Test Groups 1 and 2, while the Control Group will remain subject to the current access fee cap in Rule 610(c):

	Proposed	Adopted
Fee Cap Test Group 1	1,000 NMS stocks	730 NMS stocks.
	$0.0015 fee cap for removing & providing displayed liquidity.	*$0.0010 fee cap* for removing & providing displayed liquidity.
Fee Cap Test Group 2	1,000 NMS stocks	Not adopted.
	$0.0005 fee cap for removing & providing displayed liquidity.	
No Rebate Test Group	1,000 NMS stocks	730 NMS stocks (plus appended Canadian interlisted stocks).
	Rebates and Linked Pricing Prohibited for removing & providing displayed & undisplayed liquidity (except for specified market maker activity).	No change.
	Rule 610(c) cap applies	No change.
Control Group	Pilot Securities not in a Test Group	No change.

[154] Cboe Letter I, at 5. *See also, e.g.,* Virtu Letter, at 1–2; Nasdaq Letter I, at 12–13. *But cf.* MFA Letter, at 2 (stating that ''regulators should periodically assess market practices and regulations to ensure that U.S. equity markets continue to remain efficient, liquid, fair, resilient and transparent for all market participants'').

[155] *See* Larry Harris Letter, at 9–10.

[156] *See, e.g.,* Decimus Letter, at 4 (stating that the Pilot ''would be valuable in generating concrete information and more preferable to back-of-the-envelope calculations based on questionable assumptions''); Wellington Letter, at 1 (stating that the Commission could only ''draw[ ] definitive conclusions on the impact of existing pricing models . . . through an actual implementation'' of the Pilot); Verret Letter I, at 4 (stating that the Commission ''appears to have considered adoption of a mandatory rule to reshape market structure, and determined instead to take the more deliberative and less costly approach of an initial pilot program to generate more data from which it can determine a path forward on market structure reform''); IAC Recommendation, at 2; MFA Letter, at 2; ICI Letter I, at 1–2; RBC Letter I, at 2; Joint Asset Managers Letter, at 2; Clark-Joseph Letter, at 1; Babelfish Letter, at 3; State Street Letter, at 2; Themis Trading Letter II, at 3; IEX Letter I, at 2–3.

[157] Fidelity Letter, at 2. *See also, e.g.,* Brandes Letter, at 1 (expressing support for the Pilot and the ''Commission's effort to shed light into a subject of heated debate among market participants''); Barnard Letter, at 1 (stating that the Pilot was ''important, as historically there are many views on this topic, but a paucity of credible data from which to draw conclusions''); Angel Letter II, at 1 (stating that ''various commenters have wildly differing perspectives on what will happen under the pilot,'' which is ''strong evidence as to why the pilot is necessary'').

[158] *See, e.g.,* T. Rowe Price Letter, at 3; Clearpool Letter, at 2. The Commission notes that Nasdaq conducted an independent access fee experiment in 2015, but the limited nature of that experiment makes it difficult to draw conclusions from the data gathered by Nasdaq. *See* Proposing Release, *supra* note 2, at 13011–12. *See also, e.g.,* IEX Letter III, at 6 (''Nasdaq's experiment and its outcomes aren't a perfect proxy for what is likely to happen in the Transaction Fee Pilot. That experiment was done unilaterally and only in highly-liquid securities.''); Larry Harris Letter, at 9 (noting that Nasdaq's ''experimental fee reduction did not occur at all trading venues that traded the subject securities,'' demonstrating that ''regulatory action is necessary to establish a common pricing standard because market forces alone will not do it'').

[159] *See* Section II.A.2 for a discussion of these comments.

[160] *See also* Section II.A.2 for a discussion of these impacts.

[161] *See* Proposing Release, *supra* note 2, at 13019. The Commission notes that the proposed language in Rule 610T(b)(2)(ii)(E) has been modified slightly. As proposed, Rule 610T(b)(2)(ii)(E) was labeled as ''Test Group.'' As adopted, the label ''Pilot Group'' is being substituted for the phrase ''Test Group'' to provide additional clarity.

[162] *See id.*

3. No Overlap With Tick Size Pilot

While the Commission's proposed Pilot design took into consideration the possibility that the Pilot could have been adopted before the end of the Tick Size Pilot Program, the Commission also noted that the overlap design would not be necessary if that were not the case.[163]

A few commenters opined on the potential overlap between the proposed Pilot and the Tick Size Pilot, disagreeing on whether overlap would be appropriate.[164] However, because the Tick Size Pilot ended on September 28, 2018, there no longer is any need for the Transaction Fee Pilot to control for potential data distortions that could have otherwise resulted from the simultaneous operation of the two pilot programs. Accordingly, the Commission is not adopting the proposed Tick Size Pilot overlap design.

Relatedly, some commenters discussed whether there should be a delay between the end of the Tick Size Pilot and the start of the proposed Transaction Fee Pilot, with commenters disagreeing on that point. For example, one commenter thought a delay would be appropriate to allow markets to normalize before conducting a subsequent pilot [165] while another commenter thought markets would revert to their baseline state extremely quickly after the Tick Size Pilot ends.[166]

The Tick Size Pilot concluded, but post-pilot data continues to be collected until April 2, 2019. However, the Transaction Fee Pilot is subject to a one-month implementation period followed by a six-month pre-Pilot Period. Accordingly, the core of the Transaction Fee Pilot will not commence until *after* the post-pilot period for the Tick Size Pilot ends. By then, the Commission believes that the markets will have had sufficient time to normalize and any overlap between the Transaction Fee Pilot's pre-Pilot Period and the Tick Size Pilot's post-pilot period will be minimal. In both cases, the respective pre- and post-pilot periods are collecting benchmark data on the status quo. As such, the overlap between them should not compromise either dataset.

Finally, two commenters recommended that the Commission analyze the Tick Size Pilot data prior to proceeding with the Transaction Fee Pilot.[167] While preliminary results from the Tick Size Pilot have been made public, the two pilots are sufficiently dissimilar that the Commission sees no reason for delay. The Tick Size Pilot tested a wider minimum increment (from one cent to five cents) for smaller-capitalization stocks, whereas the Transaction Fee Pilot will test a lower rate for the Rule 610(c) fee cap and a prohibition on exchange rebates (which typically are less than one-third of a penny) for stocks of all market capitalizations. Accordingly, findings from the Tick Size Pilot are not relevant to the design of the Transaction Fee Pilot.

4. Stratified Selection of Pilot Securities

The Commission proposed to select the stocks to be included in each of the Test Groups and the Control Group through stratified sampling in a manner that permits comparisons between each Test Group and the Control Group.[168]

One commenter expressed support for the proposed approach to stratification and noted that it was ''fundamental to the ability to undertake causal inference in this setting . . . .'' [169] In contrast, a number of public company commenters expressed concern that stratified sampling could result in their stocks being placed in a different Test Group from other similar stocks in their ''peer group,'' which could complicate comparisons of their stock's performance against peer-group metrics.[170] As discussed above, those commenters supported allowing companies to ''opt out'' of the Pilot, which could impact the stratification.[171] Further, as discussed above, some commenters recommended that the Commission select ETPs for the Pilot in a manner that may avoid any potential competitive effects among similar ETPs, either by: (1) Rotating all of the Pilot Securities through the various treatment groups, (2) rotating only ETPs through the various treatment groups, or (3) grouping ETPs with similar underlying holdings into the same treatment group.[172]

While the Commission understands the concerns of these commenters, as discussed above in Section II.B, allowing issuers to opt out of the Pilot could undermine the representativeness of the Pilot's treatment groups and bias the Pilot's results. Further, also as discussed above in Section II.B, rotating ETPs would require the Commission to implement a more complex and lengthy design in order to maintain sufficient statistical power, both of which would increase the costs and complexity of the Pilot—a result viewed unfavorably by most commenters. Finally, grouping similar ETPs also could negatively impact the stratification of the different treatment groups, particularly if all of the similar ETPs are similar in volume, price, and market capitalization. In turn, this could reduce the quality and usefulness of Pilot's results by inhibiting the ability of researchers to compare treatment groups. In order to ensure that the Pilot Securities are selected in a way that permits researchers to investigate causal connections, it is imperative to stratify the Test Groups so that researchers can study the effects of changes in fees and rebates within each Test Group, between Test Groups, and between a Test Group and the Control Group. In permitting this type of analysis, the Pilot should be better able to inform future policy considerations to improve the operation of the national market system to the benefit of investors and issuers alike. Accordingly, the Commission is adopting the stratified sampling construct as proposed.

5. Number of NMS Stocks Included in Each Test Group

The Commission proposed to include 1,000 Pilot Securities in each Test Group (*i.e.,* 3,000 total across three Test Groups) with the remainder to be included in the Control Group in order to be representative of the overall population of NMS stocks and provide sufficient statistical power to identify differences between the Test Groups with respect to common stocks and ETPs.[173]

Several commenters supported including 1,000 stocks in each Test Group, believing that including 1,000 stocks in each Test Group would facilitate analysis of transaction fees and rebates on a broad cross section of different types of NMS stocks and generate statistically significant conclusions.[174]

Many commenters, however, thought that the Pilot should include fewer

[163] *See* Proposing Release, *supra* note 2, at 13019–13020 n.117, 13020 (describing the proposed composition of the Tick Size Pilot overlap subgroups). In the Proposal, the Commission specifically solicited comment on whether the Pilot should overlap with the Tick Size Pilot. *See id.* at 13025.

[164] *Cf., e.g.,* Clark-Joseph Letter, at 2 (noting that overlap ''certainly would not be a serious impediment''); SIFMA Letter, at 3 (arguing against an overlap).

[165] *See* Cboe Letter I, at 30.

[166] *See* Healthy Markets Letter I, at 14.

[167] *See* Cboe Letter I, at 29; Nasdaq Letter I, at 4.

[168] *See* Proposing Release, *supra* note 2, at 13019.

[169] *See* Spatt Letter, at 3.

[170] *See, e.g.,* Mastercard Letter, at 2; Avangrid Letter, at 2; Energizer Letter, at 1.

[171] *See supra* Section III.C.4.

[172] *See supra* Section III.C.3.b.

[173] *See* Proposing Release, *supra* note 2, at 13019–20.

[174] *See* Brandes Letter, at 2; Themis Trading Letter I, at 3; Oppenheimer Letter, at 2; Spatt Letter, at 2; IEX Letter I, at 5; Verret Letter I, at 4; AGF Letter, at 2; MFA Letter, at 3.

securities in each Test Group.[175] Several of these commenters believed the Pilot could obtain statistically significant data even with fewer stocks in each Test Group.[176] Other commenters urged the Commission to reduce the number of securities included in the Test Groups in order to reduce costs associated with the Pilot.[177] Several commenters argued that the Pilot was effectively a large scale change to the current equity market structure and that it would be more appropriate for a pilot program to apply to a smaller percentage of the universe of NMS stocks.[178] Further to this point, several commenters believed that a large Pilot may be difficult to unwind, with one commenter stating that an immediate return to current transaction fee and rebate dynamics for stocks included in the Test Groups ''could prove to be more disruptive to market participants and overall market quality than the actual implementation of the Pilot.'' [179] Some commenters also believed the Pilot would negatively impact trading in the stocks placed in certain Test Groups, such as by adversely impacting spreads, and accordingly recommended including fewer stocks so as to limit potential negative consequences.[180] Of the commenters that advocated for reducing the number of Pilot Securities in each Test Group, some suggested alternative amounts to be included. Several commenters recommended including 100 stocks in each Test Group.[181] A few others suggested that each Test Group include 500 stocks.[182] One commenter recommended ''a more tailored Pilot that includes the 225 most heavily traded names, 225 mid-cap stocks, 225 small caps and 225 ETFs would provide statistically significant data without burdening a material portion of the market.'' [183] The Commission has carefully considered the concerns expressed by commenters regarding the size of the Pilot's Test Groups.[184] As previously discussed, the Commission cannot know in advance the full effects of the Pilot, whether they be positive or negative. Indeed, commenters expressed a variety of contradicting viewpoints and estimations about the potential impacts of the Pilot on the execution quality and market quality of NMS stocks that would be included in the Test Groups.[185]

Given this uncertainty, it is crucial that the Pilot be able to produce results that are capable of facilitating an empirical review of the effect of the prevailing fee structures on the equities markets. To achieve this purpose, the Pilot needs to generate a sufficient number of observations over its one-year duration to obtain sufficient statistical power to identify differences among the Test Groups with respect to common stocks and ETPs, thereby permitting researchers to investigate causal connections using economic analysis capable of finding statistical significance. Statistical power refers to the ability for statistical tests to identify differences across samples when those differences are indeed significant and broadly is derived from the number of observations during a study. In other words, statistical power can be present when observing a limited number of subjects over a long period of time or a large number of subjects over a shorter period of time. Because the Commission desires a shorter duration for the Pilot, it therefore needs to have sufficient observable data points over the shorter pilot duration. Accordingly, if the Pilot does not contain enough securities, it may be incapable of producing statistically sound results and will not allow researchers to analyze differences in securities.

With statistical power and a sufficiently large sample size, researchers can conduct analysis of what impact (1) reductions in fees and (2) reductions in or prohibitions on rebates might have, if any, on stocks depending on their trading volume or market capitalization. A pilot design that would not provide this meaningful data about the impact that billions of dollars of exchange fees and rebates may have on the markets and market structure, would not achieve the Commission's goal of conducting a pilot capable of facilitating an objective empirical view to advance that debate.

To achieve these aims, using econometric methods designed to allow researchers to detect a 10% change with a standard confidence level of 95%, the Commission has determined that 730 securities in each Test Group are needed to enable the Pilot to produce statistically meaningful results capable of informing the Commission's future policymaking efforts. The Commission believes that a 10% change in behavior represents an economically meaningful change that will facilitate analysis of the Pilot's results, and therefore is an appropriate standard for the Pilot.[186] The determination to include 730 securities in each Test Group accounted for the need to obtain statistically significant results among stocks of various liquidity profiles as well as ETPs. While the number of NMS stocks that will be included in each Test Group will be larger than what was recommended by some commenters, the Commission believes that a smaller number of stocks may not have sufficient statistical power given the Pilot's proposed duration.[187]

Furthermore, in response to comments questioning why the Pilot included more securities than did the Tick Size Pilot, the Commission notes that the Tick Size Pilot featured 400 corporate stocks for each of its Test Groups.[188] Importantly, the Tick Size Pilot did not contain ETPs or large-cap stocks. In comparison, the Transaction Fee Pilot will contain ETPs and large-cap stocks. Accordingly, in light of the significantly higher number of securities eligible for inclusion, the Transaction Fee Pilot needs to include considerably more Pilot Securities than did the Tick Size Pilot, while continuing to achieve the same statistical power for each of those groups of securities.

Moreover, while several commenters either implicitly or explicitly referenced the EMSAC recommendation to include 100 stocks in each Test Group, EMSAC's recommendation differs substantially from the Commission's proposal. Notably, the EMSAC recommendation was limited to common stocks with a

[175] *See* Magma Letter, at 3; FIA Letter, at 4; SIFMA Letter, at 4; Schwab Letter, at 2; Fidelity Letter, at 8–9; Citadel Letter, at 2; State Street Letter, at 3; Citi Letter, at 5; Clearpool Letter, at 7; TD Ameritrade Letter, at 1; STA Letter, at 3–4; STANY Letter, at 3; Nasdaq Letter I, at 10; Cboe Letter I, at 27; T. Rowe Price Letter, at 4; Mastercard Letter, at 2; NorthWestern Letter, at 1; Energizer Letter, at 1; Era Letter, at 1; Knight-Swift Letter, at 2; ASA Letter, at 4–5.

[176] *See* Magma Letter, at 3; Schwab Letter, at 2; Fidelity Letter, at 8–9; Clearpool Letter, at 7; STA Letter, at 3–4; Cboe Letter I, at 27.

[177] *See* SIFMA Letter, at 4; Schwab Letter, at 2; Citadel Letter, at 6; Citi Letter, at 5.

[178] *See* Magma Letter, at 3; FIA Letter, at 4; Citi Letter, at 5; Clearpool Letter, at 7; Nasdaq Letter I, at 10.

[179] *See* Citadel Letter, at 6. *See also* SIFMA Letter, at 4; Citi Letter, at 5.

[180] *See* STA Letter, at 3; STANY Letter, at 3; State Street Letter, at 3; TD Ameritrade Letter, at 1, 3; Mastercard Letter, at 2.

[181] *See* FIA Letter, at 4; Schwab Letter, at 2; State Street Letter, at 3; STANY Letter, at 3; Era Letter, at 1; Cboe Letter I, at 27.

[182] *See* SIFMA Letter, at 4; Citi Letter, at 5; STA Letter, at 3.

[183] *See* T. Rowe Price Letter, at 4.

[184] *See supra* notes 175–183 and accompanying text.

[185] *See, e.g., supra* notes 75–93 and accompanying text.

[186] A confidence level of 95% is a standard accepted confidence level in statistical analyses. *See, e.g.,* William H. Greene, Econometric Analysis 1033 (Appendix C.6) (6th ed. 2007) (discussing standard confidence levels in academic research).

[187] *See also* note 695 *infra.*

[188] *See, e.g.,* Citadel Letter, at 6; TD Ameritrade Letter, at 2; Cboe Letter I, at 27. *See also* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514, 27517 (May 13, 2015) (File No. 4–657) (order approving the National Market System Plan to Implement a Tick Size Pilot Program).

market capitalization above $3 billion and did not include ETPs, mid- and small-cap stocks, or other types of NMS stocks. In order for the Pilot to permit a broader empirical review of the impact of transaction fees and rebates on order routing, execution quality, and market quality, it is critical that the sample size be representative of the population of NMS stocks for which exchange transaction fees and rebates are economically meaningful. The Pilot must contain enough securities to achieve the statistical power necessary to permit closer analysis of the Pilot's results in order to identify differences in order routing behavior, market quality, and execution quality among subgroups of NMS stocks (*e.g.,* ETPs, or tiers of common stock).

6. Reduction to the Pilot Size

To respond to commenters' concerns with the size of the Pilot, including a recommendation from the SEC's Investor Advisory Committee, the Commission has determined to eliminate one Test Group and reduce the number of stocks in each Test Group to 730.

In order to materially reduce the size of the Pilot without sacrificing statistical power, the Commission has determined to: (1) Only place Pilot Securities in a Test Group if, at the time of selection, they trade 30,000 shares or more per day on average and (2) eliminate a Test Group.

With respect to securities that trade fewer than 30,000 shares per day, assuming, at an extreme, that such security trades 100% of its volume on a maker-taker exchange paying a $0.0030 rebate, then it would generate $100 in rebates per day. In addition, for thinly-traded stocks with wider spreads, the rebate would be less impactful as it would represent a smaller percentage of the quoted spread. This amount of rebates would be economically insignificant and would be unlikely to impact order routing behaviors of broker-dealers. In addition, this level of trade volume makes it unlikely to produce sufficient statistical power to analyze the securities in isolation because the variability in their quoting and trading characteristics renders it unlikely the Pilot would generate a sufficient number of observations given the Pilot's proposed duration. In addition, for commenters that believe that thinly-traded stocks need rebates to narrow their quoted spreads, excluding these securities from the Pilot will allow exchanges to continue to apply their current fee schedules to them, which will provide another point of reference to analyze when comparing these securities to those with slightly higher trading volumes.

Finally, the Commission believes that eliminating one Test Group and functionally combining proposed Test Group 1 and Test Group 2 into a new Test Group with a $0.0010 cap will result in decreasing the number of NMS stocks included in a Test Group in the Pilot by one-third, which is integral in reducing the overall size of the Pilot by more than one-half. The Commission believes this material reduction directly responds to commenters' concerns, while still providing the Pilot with a meaningful group in which to test a reduced fee cap and a prohibition on rebates and Linked Pricing.

Accordingly, the Commission believes that the Pilot's design of 730 NMS stocks per Test Group strikes an appropriate balance by reducing the number of stocks in each Test Group and thus mitigating the concerns of commenters about potential detrimental impacts that could be caused by the proposed larger size of the Pilot,[189] without undermining the ability to obtain useful data to study the impact of changes to transaction fees and rebates on order routing behavior, execution quality, and market quality for a broad spectrum of stocks. It also is large enough to accommodate drop offs among Pilot Securities (*e.g.,* due to mergers, bankruptcies, or stocks closing below $1).[190]

7. Fee Cap Test Groups

The Commission proposed that for Pilot Securities in Test Group 1, equities exchanges could neither impose, nor permit to be imposed, any fee or fees for the display of, or execution against, the displayed best bid or offer of such market in NMS stocks that exceeds or accumulates to more than *$0.0015* per share.[191] The level proposed for Test Group 2 was *$0.0005* per share.[192]

After careful consideration of the comments received, which are discussed below, the Commission is eliminating Test Group 2 and adopting a revised Test Group 1 with a $0.0010 cap.

a. Fee Cap Level

Commenters disagreed about the appropriateness or justification for the proposed fee cap levels.[193] For example, one commenter stated that ''exchanges currently compete on fees by offering a range of access fees and rebates within the confines of the current $0.0030 access fee cap'' but the fee caps in Test Groups 1 and 2 ''will reduce the exchanges' ability to compete on fees by 50% in Test Group 1'' and ''83% in Test Group 2'' which could be ''to the detriment of investors and the public interest.'' [194] In contrast, regarding proposed Test Group 1, another commenter stated that ''[a]t 15 mils, there is still room for significant fee differentiation and rebates remain sizeable.'' [195]

With respect to Test Group 2, one commenter stated that ''[i]f the ultimate intent of the proposal is to determine whether or not reducing access fees will have an effect on how brokers route their customers' orders, then we fully support the notion of Test Group 2 to see if the incentive to avoid access fees is eliminated with a 5 cents per 100 share cap.'' [196] Another commenter further stated that ''to the extent that rebates have been traditionally funded by exchanges by the fees collected,'' then Test Group 2 ''may lead to rebate reductions'' and obtaining data on this point is ''part of the reason why a study is needed.'' [197]

Finally, the Investor Advisory Committee recommended that the Commission structure the Pilot's Test Groups ''as simply as possible,'' and was not persuaded that, in addition to having the no-rebate Test Group, having two additional Test Groups with separate fee caps ''will generate enough additional information to justify the additional effort.'' [198] Accordingly, the Investor Advisory Committee recommended that the Commission consider having, in addition to the no-rebate Test Group, only one Test Group with a fee cap and suggested a cap of $0.0010.[199]

The Commission appreciates the recommendation of the Investor Advisory Committee and agrees with it. As noted above and further discussed below, eliminating Test Group 2 will decrease the size of the Pilot by one-

[189] *See supra* notes 175–180 and accompanying text.

[190] *See* Proposing Release, *supra* note 2, at n. 102.

[191] *See* Proposed Rule 610T(a)(1). *See also* Proposing Release, *supra* note 2, at 13021–22.

[192] *See* Proposed Rule 610T(a)(2). *See also* Proposing Release, *supra* note 2, at 13022.

[193] *See* Cboe Letter I, at 16 (stating that the Proposing Release ''does nothing to justify how the $0.0015 and $0.0005 fee cap levels are appropriate'' and that lowering the current fee cap ''without meaningful discussion or justification is concerning and inappropriate''); Morgan Stanley Letter, at 1. *But cf.* Healthy Markets Letter I, at 15–16 (stating that the fee caps for Test Groups 1 and 2 ''appear to be well-justified'').

[194] *See* Cboe Letter I, at 16–17.

[195] *See* Credit Suisse Commentary, at 3.

[196] *See* T. Rowe Price Letter, at 2.

[197] *See* Healthy Markets Letter I, at 15–16.

[198] IAC Recommendation, at 1.

[199] *See id.* For other commenters suggesting a $0.0010 fee cap, *see* Goldman Sachs Letter and NYSE Letter III.

third. New Test Group 1 will have a cap of $0.0010, which adopts the Investor Advisory Committee's recommendation and represents a blended average of the two fee caps the Commission originally proposed.

The Commission believes that new Test Group 1 retains the equities exchanges' ability to compete through differing fees and rebates, as a fee cap of $0.0010 provides exchanges with an opportunity to utilize various fee and rebate structures to compete for order flow. As some commenters noted, the current access fee cap was set thirteen years ago and may represent an outsized portion of transaction costs in light of the technological efficiencies achieved by the equities markets in the last decade.[200]

As revised, new Test Group 1 will facilitate an analysis of the extent to which exchanges reduce rebates from their current levels as a result of a materially reduced cap on the fees used to subsidize those rebates, and the impact of a reduced fee and rebate level on order routing behavior, execution quality, and market quality. In addition, by materially reducing the fee cap, the Commission believes that new Test Group 1 will provide useful data on the extent to which current exchange fee levels (bounded by the current access fee cap) serve as a disincentive to take liquidity on an exchange. Obtaining useful information to better understand the potential impact of a significantly reduced access fee cap will ultimately be beneficial to investors and the public interest, as it may help illuminate the extent to which the current fees and rebates effect the market and the extent to which those effects have a detrimental impact on investor transaction costs.

b. Applicability to Depth-of-Book and Non-Displayed Liquidity

As proposed, Test Groups 1 and 2 were designed to isolate and test a reduction in the Rule 610(c) fee cap, with all else remaining unchanged. In the Proposing Release, the Commission asked whether commenters thought the fee caps in Test Groups 1 and 2 also should apply to depth-of-book and undisplayed liquidity.[201] One commenter recommended that it should.[202]

In the Proposing Release, the Commission stated that it preliminarily believed it was unnecessary for the fee cap Test Groups to apply to depth-of-book and undisplayed liquidity because it would be highly unlikely for an exchange to begin charging *more* to access non-displayed interest or depth-of-book quotes (compared to displayed interest), as it would lead to uncertainty for market participants that remove liquidity because they typically would not be able to know in advance or control with absolute certainty whether they interact with non-displayed interest or depth-of-book quotes.[203] The Commission continues to believe it would be unlikely that either maker-taker or taker-maker exchanges would begin charging differing fees in such a manner.[204] Furthermore, the Commission notes that the Rule 610(c) access fee cap does not currently apply to non-displayed interest or depth-of-book quotes. Introducing a new variable into the fee cap Test Groups would make it more difficult to isolate the effects of a particular change and uncover causal connections. Accordingly, for the reasons noted above and discussed in the Proposing Release, the Commission is not adopting this suggestion.[205]

c. Prohibiting Rebates and Linked Pricing in Test Groups 1 and 2

In Test Groups 1 and 2 the Commission did not propose to cap the level of rebates, prohibit rebates, or prohibit Linked Pricing, the latter two of which it proposed to do in the no-rebate Test Group as discussed below.[206] In response, several commenters advocated for applying restrictions on rebates to the fee cap Test Groups, primarily in reaction to the potential for exchanges to subsidize their rebates at or near current levels from sources other than transaction fee revenue.[207] For example, one commenter stated that ''[t]here is already ample evidence to suggest that some exchanges currently use revenues from other sources to subsidize their order routing incentives, including rebates,'' such that the proposed fee caps may have no impact on the level of rebates paid for Pilot Securities in the fee cap Test Groups.[208] This commenter therefore suggested that the fee cap Test Groups include two subgroups, one as proposed, and a second that would prohibit rebates and Linked Pricing (and also apply to depth-of-book and non-displayed liquidity).[209]

The Commission has carefully considered these comments and has determined not to adopt these additional restrictions. While adding more variables or more Test Groups to the Pilot could produce informative results, it would directly complicate the Pilot's design thus raising the Pilot's costs and burdens. For example, if the Commission were to add subgroups to new Test Group 1 to prohibit rebates, it likely would have to expand the number of stocks included in the treatment groups or expand the duration of the Pilot in order to achieve statistical power.[210] It also would further complicate exchange fee schedules and could lead to more variability in exchange fees if exchanges customized their pricing differently for each Test Group and subgroup. Rather, the Pilot's design represents a comparatively simple construct that is easier to implement and manage and yet should still facilitate the Commission's ability to analyze the impact of fees and rebates on order routing behavior, execution quality, and market quality. Achieving these goals, while minimizing complexity and burdens, will also assist the Commission as it considers potential future policy initiatives informed by the results of the Pilot.

In addition, the fee cap Test Groups were specifically selected to provide the exchanges with the continued ability to offer rebates, should they so choose, albeit at lower levels, without impacting an exchange's ability to maintain its net profit on a per transaction basis. The Commission declines to prohibit rebates in new Test Group 1 as doing so would go beyond the construct and application of the Rule 610(c) fee cap by introducing additional variables, and thus would distinctly alter the status quo in that Test Group, thereby complicating the analysis in that treatment group.

Lastly, the Commission continues to believe that it is unlikely that exchanges will offer rebates at their current levels for Pilot Securities in new Test Group 1 because exchanges will need to charge lower offsetting transaction fees in that group in order to maintain a profitable

[200] *See* Citi Letter, at 1–2; Goldman Sachs Letter, at 2.

[201] *See* Proposing Release, *supra* note 2, at 13025.

[202] *See* Clearpool Letter, at 3 n.6.

[203] *See* Proposing Release, *supra* note 2, at 13023 n.136–37 and accompanying text.

[204] In the Proposing Release, the Commission acknowledged that there were three exchanges that charged different fees for displayed and non-displayed liquidity. *See id.* Currently, there are two, IEX and NYSE American. The Commission notes that the differences in fees are minimal and because a small portion of exchanges have chosen to adopt this fee structure to date, it is unlikely a significant portion will choose to do so.

[205] *See* Proposing Release, *supra* note 2, at 13022–23.

[206] *See* Section II.C.6.d. *infra. See also* Proposing Release, *supra* note 2, at 13021–24.

[207] *See* CFA Letter, at 6; Clearpool Letter, at 2–3; Healthy Markets Letter I at 27–29.

[208] *See* Healthy Markets Letter I, at 28.

[209] *See id.* at 16.

[210] *See supra* Section II.C.5 discussing the need to generate a sufficient number of observations over the Pilot's duration to permit researchers to investigate causal connections using economic analysis capable of finding statistical significance.

pricing model. However, the Commission also recognizes, as did commenters, that it is possible that the exchanges may choose to subsidize rebates in Test Group 1 from other sources of revenue, which could result in rebates exceeding the fee cap in that group. Whether and to what extent that would occur in practice would be an important result in new Test Group 1, and so the Commission believes the Pilot should be structured so as not to preclude that possible result. The Commission will closely monitor the fees charged by the exchanges for non-transaction services during the Pilot and will consider the Pilot's impact on such fees.

d. No-Rebate Test Group

The Commission proposed that for Pilot Securities in Test Group 3, equities exchanges generally would be prohibited from offering rebates, either for removing or posting liquidity, and from offering Linked Pricing, which, as discussed further below, is defined as a discount or incentive on transaction fee pricing applicable to removing (or providing) liquidity that is linked to providing (or removing) liquidity.[211] In addition, Test Group 3 would be unique in that its restrictions would apply not only to displayed top-of-book [212] liquidity, but also would apply to depth-of-book [213] and undisplayed liquidity.[214] Transaction *fees* for securities in Test Group 3 would remain subject to the current $0.0030 access fee cap in Rule 610(c) for accessing a protected quotation.

After careful consideration of the comments received on Test Group 3, discussed below, the Commission is adopting Rule 610T(a)(3) as proposed, though it is being renamed as ''Test Group 2'' since the Commission has reduced the number of Test Groups from three to two.

e. Prohibiting Rebates

While there was significant disagreement among commenters on this aspect of the Pilot, most commenters supported a ''no rebate'' group as they believed it was critical to fully examine the effect that transaction fees and rebates have on order routing behavior, execution quality, and market quality.[215]

In contrast, several commenters opposed prohibiting equities exchanges from paying rebates. Specifically, three of the four exchange commenters asserted that it would inhibit the ability of exchanges to compete with off-exchange trading venues.[216] In addition, these three commenters, together with other commenters, expressed concerns that prohibiting exchanges from paying rebates to liquidity providers would widen the quoted bid-ask spread on exchanges, which could raise costs on investors.[217] Several of these commenters believed that eliminating rebates for ''less-liquid'' or ''small and medium sized companies'' would disproportionately impact the quoted spreads for such stocks as they believed that rebates are a more significant incentive to provide liquidity for less actively traded securities.[218] Other commenters also expressed concerns that spreads would widen for ETPs, specifically less liquid ETPs, if rebates were prohibited or significantly reduced.[219]

The Commission is aware of the potential for adversely impacting smaller capitalization securities, however, the Commission does not agree with the commenters that believe that the Pilot necessarily will result in such harm, or if there are adverse effects in the trading of all or some portion of smaller capitalization securities, that the net effect across securities will be negative. Rather, the Commission agrees with the many commenters who believed that it is unclear what the ultimate net impact of a no-rebate Test Group will be on quoted spreads and trading costs for NMS stocks of different market capitalizations and trading characteristics.[220] The purpose of the Pilot is to generate results that can offer data-driven insight on these questions as a basis for possible future policy making in this area. As discussed elsewhere, the revised Pilot has excluded securities that trade fewer than 30,000 shares per day, as they are less likely to provide actionable data.

This lack of empirical clarity is reflected in the divergent views of commenters who offered conflicting predictions of the outcome of a no-rebate Test Group. For example, one commenter questioned whether rebates were necessary to attract displayed liquidity, opining that ''[p]ublic data shows that inverted and flat-fee exchanges often have quotes on *both* sides of the NBBO, which shows that market participants are willing to pay these exchanges to post quotes at the NBBO based on their intrinsic desire to trade and not just in response to an exchange rebate'' [221] (emphasis in original). In response, one exchange commenter suggested that Cboe EDGA Exchange, which does not pay rebates, has wider spreads for displayed liquidity as compared to Cboe EDGX Exchange, which does pay rebates for posting liquidity.[222] A different commenter did not ''anticipate a material widening for the most liquid names (where rebates aren't necessary to incentivize liquidity providers) or the most illiquid names (where rebates aren't sizable enough to incentivize liquidity providers),'' and instead anticipated ''a likely outcome of increased spreads for the middle tier of

[211] *See* Proposed Rule 610T(a)(3); Proposing Release, *supra* note 2, at 13022–24.

[212] ''Top-of-book'' means the aggregated best bid and best offer resting on an exchange; in other words, aggregate interest that represents the highest bid (to buy) and the lowest offer (to sell). *See* 17 CFR 242.600(b)(7) (defining ''best bid'' and ''best offer'').

[213] ''Depth-of-book'' refers to all resting bids and offers other than the best bid and best offer; in other words, all orders to buy at all price levels less aggressive than the highest priced bid (to buy) or all offers to sell at all price levels less aggressive than the lowest priced offer (to sell). *See* 17 CFR 242.600(b)(8) (defining ''bid'' and ''offer'').

[214] ''Undisplayed'' refers to resting orders that are ''hidden'' and not displayed publicly in the consolidated market data. *See* 17 CFR 242.600(b)(13) (defining ''consolidated display'') and (b)(60) (defining ''published bid and published offer'').

[215] *See, e.g.,* Joint Asset Managers Letter, at 1; Clark-Joseph Letter, at 2; Brandes Letter, at 1; CII Letter, at 3; Themis Trading Letter I, at 3; AJO Letter, at 3; OMERS Letter, at 2; Copeland Letter, at 2; ICI Letter I, at 3; Nuveen Letter, at 2; SIFMA Letter, at 3–4; Better Markets Letter, at 2, 5; RBC Letter I, at 3; Vanguard Letter, at 2–3; Fidelity Letter, at 9; Invesco Letter, at 2; CFA Letter, at 4; MFS Letter, at 2; Wellington Letter, at 2; Joint Pension Plan Letter, at 2; Citi Letter, at 2; Oppenheimer Letter, at 2; Clearpool Letter, at 2; Spatt Letter, at 2; Capital Group Letter, at 3; Healthy Markets Letter I, at 17; IEX Letter I, at 5; Verret Letter I, at 4; Norges Letter, at 2; AGF Letter, at 1; Decimus Letter, at 3; JPMorgan Letter, at 3.

[216] *See* Cboe Letter I, at 7, 15–16; NYSE Letter I, at 3–6; Nasdaq Letter I, at 7–8. *See also, e.g.,* Mastercard Letter, at 1–2; Capital Group Letter, at 3; Magma Letter, at 2; FIA Letter, at 4.

[217] *See, e.g.,* Cboe Letter I, at 7; Nasdaq Letter I, at 9; NYSE Letter I, at 6; Magma Letter, at 2; State Street Letter, at 3; Morgan Stanley Letter, at 4; Cboe Letter II, at 4–7. See also Nasdaq Letter III, at Exhibit A (providing graphs using data from September 2018 on average quoted spread across exchanges in S&P 500 stocks and time at the best quote across those stocks). *But cf.* Larry Harris Letter, at 6–9 (acknowledging that ''quoted spreads are narrower under maker-taker pricing,'' but opining that ''the narrower quoted spreads do not benefit the public'').

[218] *See, e.g.,* Nasdaq Letter I, at 9; NYSE Letter II, at 11; RBC Letter I, at 5; Nasdaq Letter III.

[219] *See, e.g.,* Virtu Letter, at 7; Schwab Letter, at 3; State Street Letter, at 2.

[220] *See, e.g.,* Decimus Letter, at 5 (observing that ''claims on the existence of unambiguous harm to liquidity appear to be exaggerated and driven by preconceived notions''). *See also* Section IV *infra* (discussing the uncertainty of the Pilot's outcomes).

[221] IEX Letter II, at 7.

[222] *See* NYSE Letter II, at 2. One commenter questioned NYSE's analysis in this regard, noting that in general EDGA's volume is limited to ''the most liquid names.'' This commenter stated that NYSE ''distorts the real likely impact of the [P]ilot'' by including spreads on less liquid securities. *See* Mulson Letter II, at 2.

securities, where rebates have perhaps kept spreads artificially narrow.'' [223]

Another commenter believed that quoted prices are ''almost always set by natural investors'' and therefore, ''[r]emoving rebates will not disrupt the desire of natural investors to post liquidity and tighten spreads.'' [224] In response, one commenter was ''skeptical'' about this and stated that ''it is not realistic for the buy-side to be continuously active on both sides of the market across all stocks impacted by the Transaction Fee Pilot.'' [225] That said, another commenter, which also is a listed issuer, stated that it did not ''expect that a reduction or outright removal of rebates will have any significant or harmful effects on the quality of prices displayed in the public lit market, interfere with genuine liquidity and price formation, or negatively impact [its] stock's trading volume, spread or displayed size.'' [226]

The Commission believes that the significant disagreement among commenters on the potential impacts of prohibiting rebates demonstrates the need to include a no-rebate bucket in the Pilot. For example, it is unclear what effect—if any—the payment of a rebate has on a stock that trades over 10 million shares per day with an average natural quoted spread width constrained by the minimum trading increment of $0.01. Likewise, it is unclear what effect—if any—the payment of a rebate has on a stock that trades less than 100,000 shares per day with an average quoted spread of $0.10 or more. In either case, the absence of rebates may have little or no effect on quotes or competition for natural order flow in such securities. Data is needed to empirically evaluate commenters' diverging views of the effect of rebates. The Pilot is designed to produce this and other data.

By prohibiting rebates in one Test Group the Pilot should produce results that facilitate a direct study of the effect of rebates, including on fees, order routing, execution quality, and market quality.[227] The Commission believes that the no-rebate Test Group will provide useful information on trading in the absence of rebates that will facilitate a data-driven approach to better understand the role and effect of rebates in our current market structure. The results generated by this Test Group will allow researchers to study the relationship between rebates and quoted spreads for stocks of varying liquidity profiles and market capitalizations. It also will allow market participants to directly test with their own order flow whether, in the absence of rebates in the most actively traded stocks, they are better able to compete for queue priority and thereby capture the quoted spread when posting liquidity.[228] Therefore, the Commission continues to believe that the Pilot will be substantially more informative with a no-rebate bucket and the value of generating that information to inform the Commission's consideration of the effect of exchange transaction fee models justifies proceeding with the Pilot to better inform both sides of the rebate debate with data to test their hypotheses.

In summary, the Commission has carefully considered commenters' suggested alternatives and whether to include the no-rebate feature in the Pilot, and in light of the important regulatory purpose the Pilot is designed to achieve, the Commission has determined that, for the reasons discussed throughout, it is important to have a Test Group that specifically focuses on the removal of rebates and the corresponding impact on conflicts of interest, execution quality, and market quality.

Finally, one commenter asserted that banning rebates ''presents [a] misapplication of Rule 610(c)'' because the Commission has never before banned rebates.[229] While neither Rule 610(c), nor any other Commission rule, currently prohibits a national securities exchange from paying a rebate to provide or remove liquidity, the Commission does not believe that the no-rebate Test Group misapplies Rule 610(c), or any other rule. The no-rebate Test Group is not based on or related to Rule 610(c). Rule 610(c) caps fees for removing a protected quotation, whereas the no-rebate Test Group does not further limit fees and instead prohibits rebates, among other things. Indeed, the Rule 610(c) fee cap continues to apply—unchanged and in its entirety—to the no-rebate Test Group.

The data generated by the Pilot will help empirically assess, in light of changing market conditions, whether the existing transaction-based fee and rebate structure continues to further the statutory goals.[230] Importantly, while exchanges would retain the ability to charge transaction fees as high as the current $0.0030 cap in the no-rebate Test Group, they would no longer need to charge transaction fees at levels priced to offset the rebates they formerly paid. Accordingly, the no-rebate Test Group is intended to test, within the current Regulation NMS regulatory structure, natural equilibrium pricing for transaction fees.

f. Application to Depth-of-Book and Non-Displayed Liquidity

Several commenters supported applying the prohibition on rebates in the no-rebate Test Group to depth-of-book and non-displayed liquidity as they believed it would avoid the risk that the Pilot's results could be subject to distortions if exchanges continue to offer rebates for depth-of-book and non-displayed liquidity.[231] In contrast, two exchange commenters opposed this aspect of the proposal. One characterized this aspect of the proposal as an ''unjustified pricing restriction[ ]'' that was part of a ''new regulatory scheme . . . .'' [232] The other argued that ''[t]he Proposal lacks internal coherence'' in that it excludes ATSs ''because they do not have protected quotes, but then includ[es] unlit exchange orders that also are unprotected.'' [233]

For the reasons stated in the Proposing Release, the Commission continues to believe that allowing exchanges to continue to offer rebates in the no-rebate Test Group for depth-of-book and non-displayed orders could substantially distort the Pilot results.[234] The no-rebate Test Group is designed to test the absence of exchange transaction rebates. It would weaken the Pilot's results to prohibit rebates on displayed orders but allow them on non-displayed orders, as the Pilot would not be able to collect data on what would happen in the absence of rebates. Only by prohibiting the payment of all rebates in one Test Group will the Commission be able to gather data on a pure ''no rebate'' environment, thereby facilitating a direct observation of the impact of rebates on order routing behavior, execution quality, and market quality

[223] Citi Letter, at 3–4. *See also* Credit Suisse Commentary, at 3.

[224] *See* Mulson Letter I, at 1. *See also* IEX Letter II, at 6.

[225] NYSE Letter II, at 11.

[226] *See* T. Rowe Price Letter, at 5.

[227] *See* Proposing Release, *supra* note 2, at 13022–23.

[228] *See, e.g.,* T. Rowe Price Letter, at 2; Brandes Letter, at 1–2; Babelfish Letter, at 2.

[229] *See* Cboe Letter I, at 12–13. *See also* Section II.G (responding to comments regarding the Commission's legal authority to conduct the Pilot).

[230] For example, if take fees are set at levels to subsidize maker rebates, and if those rebates have little or no impact on quoted spreads of certain NMS stocks, then the take fees on trades in those stocks may constitute a tax on takers of liquidity without a corresponding benefit to the market.

[231] *See, e.g.,* Clark-Joseph Letter, at 2; Clearpool Letter, at 3 n.6; Healthy Markets Letter I, at 18; IEX Letter I, at 7.

[232] NYSE Letter I, at 12.

[233] Nasdaq Letter I, at 6.

[234] *See* Proposing Release, *supra* note 2, at 13023.

when compared to the other Test Group and Control Group.

As noted above, the Commission received a significant number of comments in support of directly studying the effects of prohibiting rebates.[235] In order to avoid the potential distortion from a too-narrowly-tailored Test Group that focuses only on one type of rebate but ignores another, the Commission believes that prohibiting rebates on all exchange volume—including depth-of-book and non-displayed liquidity—is necessary to generate the most useful Pilot results on the effect of exchange transaction rebates broadly.

In addition, the Commission believes that the no-rebate Test Group's application to depth-of-book and non-displayed orders is consistent with the Commission's decision to exclude ATSs, which do not have protected quotes.[236] As discussed above, ATSs are excluded from the Pilot based on a number of reasons, including the materially different treatment of exchange fees under the current federal securities laws and their lack of a protected quotation. With respect to the no-rebate Test Group, it would be incoherent for the Commission to purport to test a prohibition on exchange transaction-based rebates but do so only for some rebates (*i.e.,* on displayed interest) while ignoring the potential for exchanges to pay rebates on non-displayed liquidity and depth-of-book interest.[237] The possibility that an exchange could offer *rebates* for non-displayed and depth-of-book quotes, while eliminating them on displayed interest, could present a loophole with the potential to undermine the design of the no-rebate Test Group and distort the Pilot results for the no-rebate Test Group, rendering the results of the Pilot's ''no-rebate'' Test Group incapable of speaking to the impact of rebates.

g. Maintaining Rule 610(c) Access Fee Cap

Two commenters recommended that, unlike Rule 610(c), the no-rebate Test Group go beyond Rule 610(c) to also prohibit exchanges from charging *fees* in excess of $0.0030 to *provide* displayed liquidity.[238] As noted in the Proposing Release, the no-rebate Test Group is designed specifically to test, within the current regulatory structure, natural equilibrium pricing for transaction fees in an environment where exchange transaction-based rebates are prohibited.[239] While this would theoretically allow an exchange to charge fees in excess of $0.0030 to provide liquidity, the Commission notes that several exchanges stated that one of the perceived benefits in providing rebates to liquidity providers is that it facilitates narrower spreads and therefore believes it is unlikely exchanges would charge such higher fees during the Pilot.[240]

One commenter expressed concerns that the no-rebate Test Group would ''provide exchanges with the flexibility to propose a variety of new fee structures for liquidity-taking orders,'' which could create new conflicts for brokers routing customer orders.[241] Accordingly, this commenter believed that the no-rebate Test Group should instead impose a fee cap of $0.0002, where the expectation would be that rebates would be lowered to a *de minimis* amount and the Pilot would be more symmetrical and thereby more effective in analyzing broker order routing practices.[242] The Commission continues to believe that in light of the current debate surrounding the potential conflict of interest posed by the payment of rebates and potential effects they may have on the markets, including the many comments received in response to the Proposal, the Pilot will be substantially more informative with a no-rebate bucket than a bucket that dramatically lowers the fee cap assuming that rebates would follow. While reducing the fee cap to $0.0002 would reduce the likelihood that an exchange would offer rebates at current levels (assuming the exchange desired to fund transaction-based rebates only through transaction-based fees), exchanges would retain the ability to pay rebates and could subsidize them from other sources of revenue leading to rebates that greatly exceed $0.0002. In contrast, only a complete prohibition on rebates will permit researchers to observe directly the impact of rebates on order routing behavior, execution quality, and market quality, and compare this Test Group to the Control Group and the other Test Group where rebates can continue to be offered. Further, imposing a fee cap of $0.0002 instead of prohibiting rebates would not allow Test Group 2 to test, within the current Regulation NMS regulatory structure, natural equilibrium pricing for transaction fees, particularly if the cap is below where the natural equilibrium price would otherwise be found.

Two commenters expressed concern that because exchanges can continue to charge access fees of up to $0.0030 per share in the no-rebate Test Group, they may fail to engage in competition on fees.[243] In contrast, another commenter believed that, in the no-rebate Test Group, ''the fee for removing liquidity could still move closer to zero in order for exchanges to incentivize takers in the absence of rebates.'' [244] The Commission believes that observing price competition in the absence of any distortive effects caused by rebates is an important aspect of the Pilot. Accordingly, the no-rebate Test Group is intended to test, within our current regulatory structure, whether competitive market forces are sufficient to produce natural equilibrium pricing for transaction fees in the absence of rebates.

h. Prohibiting Linked Pricing

In connection with prohibiting rebates, the no-rebate Test Group also would prohibit Linked Pricing, such that an exchange would be prohibited from adopting any discounts on transaction fees to remove (*i.e.,* ''take'') liquidity where that discount is determined based on the broker-dealer's posted (*i.e.,* ''make'') volume on the exchange, which would result in the broker-dealer paying a lower take fee in return for providing a certain level of liquidity on the exchange.[245]

Some commenters that addressed the prohibition on Linked Pricing were supportive of the proposal and generally believed that the prohibition would preserve the integrity of the Pilot and facilitate an environment where exchanges are able to set transaction fees at a natural equilibrium level.[246] In contrast, two exchange commenters opposed the prohibition.[247] Specifically, one commenter characterized this aspect of the proposal, in conjunction with the prohibition on rebates, as an ''unjustified pricing restriction'' that is ''unrelated to Regulation NMS's Access

[235] *See supra* note 215.

[236] *Cf. supra* note 233.

[237] Price-time priority (where orders are prioritized for execution based on ranking by price and, when two orders are at the same price, by time of entry), generally does provide the ability for an incoming order to bypass non-displayed liquidity.

[238] *See* Healthy Markets Letter I, at 18; CFA Letter, at 6–7.

[239] *See* Proposing Release, *supra* note 2, at 13023.

[240] *See supra* notes 217–218 and accompanying text.

[241] *See* Citadel Letter, at 5.

[242] *See id.*

[243] *See* Fidelity Letter, at 9; Citadel Letter, at 5.

[244] Credit Suisse Commentary, at 4.

[245] *See* Proposing Release, *supra* note 2, at 13023. The Commission notes that most exchanges also utilize tiering in their pricing models in which they offer lower fees or larger credits in return for additional volume. *See, e.g.,* Spatt Letter, at 4; RBC Letter II, at 4.

[246] *See, e.g.,* Capital Group Letter, at 3; IEX Letter I, at 7.

[247] *See* NYSE Letter I, at 12; Cboe Letter I, at 10.

Fee Cap.'' [248] As discussed above, the no-rebate Test Group, including the Linked Pricing prohibition, is not based exclusively on the Rule 610(c) fee cap.

The Commission continues to believe that prohibiting Linked Pricing supports the objective of the no-rebate Test Group, which is to gather data on the impact of creating an environment where fee levels are not potentially distorted by the rebates they subsidize and rebates do not influence routing, particularly for customer orders.[249] In the absence of a Linked Pricing prohibition, exchanges could use make (take) volume to subsidize take (make) activity, which could perpetuate the cross-subsidization of fees. For example, if an exchange adopts Linked Pricing for the no-rebate Test Group securities, it might offer a discounted transaction fee to *remove* liquidity only to those market participants that *post* a certain volume on the exchange. Perpetuating this potential distortion could cloud the Pilot results for the no-rebate Test Group if the Linked Pricing incentive interferes with the Pilot's ability to isolate and analyze the impacts on fees and routing that the no-rebate Test Group is designed to study.

Two commenters recommended that the Commission also prohibit an exchange from offering any inducement, including discounts on *non*-transaction fees, such as those for market data, co-location, or connectivity ports, which are linked to trading volumes in the no-rebate Test Group.[250] The Commission is not expanding the application of the Linked Pricing prohibition in the manner suggested by these commenters. The Pilot, and the no-rebate Test Group specifically, is designed to test the extent to which transaction fees and rebates create conflicts of interest that influence order routing or introduce distortions that impede execution quality and market quality. The Pilot is not designed to eliminate or control for all potential inducements to transact on a particular market and the Commission believes that expanding the Pilot to a wider array of variables could inhibit the Pilot's ability to isolate the impacts of exchange transaction-based rebates and the effects they may have.[251]

Further, two commenters requested the Commission to clarify that the Linked Pricing prohibition applies across Test Groups such that exchanges may not tie rebates or transaction fee discounts in another Test Group to volume in the no-rebate Test Group.[252] As previously stated in the Proposal, the no-rebate Test Group is designed to gather data on the impact of creating an environment where fee levels are not potentially distorted by rebates and rebates do not influence routing. In proposing the Linked Pricing prohibition, the Commission recognized that a Linked Pricing arrangement could potentially distort transaction fee pricing if fees continue to be set at a subsidy level above their natural equilibrium, and it also could perpetuate the potential conflicts of interest associated with rebates and order routing. Any Linked Pricing incentives offered by exchanges that are linked, or otherwise related to, posting or removing liquidity in Pilot Securities included in the no-rebate Test Group would contradict the Commission's intent for the no-rebate Test Group and frustrate the ability of the Pilot to generate useful data in that group. Accordingly, the Linked Pricing prohibition in Test Group 2 prohibits exchanges from offering any discounts or incentives on transaction fees that are linked to activity, whether it be posting or removing activity, in any securities included in Test Group 2, as well as prohibits exchanges from offering Linked Pricing arrangements in Test Group 2 securities that are based on, or include, activity in any Pilot Securities.

In addition, one commenter ''suggest[ed] that the linked pricing prohibition should extend to auction fees or any other transaction fees charged by the exchange,'' as ''[c]losing auction fees, especially, are a significant source of listing market revenue, and . . . discounts on these fees could likewise lead to the distortions described by the Commission (or even to increases in auction fees to other participants to fund the targeted discounts).'' [253] Because Rule 610T(a)(3) prohibits exchanges from providing a discount or incentive on *transaction fees* applicable to removing (providing) liquidity that is linked to providing (removing) liquidity, and auction fees are ''transaction fees,'' the Linked Pricing prohibition applies to auction fees. Exchanges will not be permitted to consider make (take) volume during intraday trading when calculating auction fees, as such an arrangement would perpetuate potential distortions associated with fee-and-rebate pricing models including the cross-subsidization of fees.

i. Linked Pricing Market Maker Exception

The Commission proposed an exception to the Linked Pricing prohibition to permit an exchange to adopt new rules to provide non-rebate Linked Pricing to its registered market makers during the Pilot in consideration for the market maker meeting rules-based market quality metrics.[254] The Commission explained that to qualify for this limited exception, an exchange would need to propose market making standards in a rule change filing submitted pursuant to Section 19(b)(2) of the Exchange Act, and also would need to propose the fee incentive it would provide for meeting those standards.[255]

Several commenters requested further clarification about the market maker exception to the prohibition on Linked Pricing. Specifically, one commenter recommended that the Commission provide additional detail about the types of market quality metrics upon which access to Linked Pricing is contingent.[256] Other commenters believed that it is important that any such standards adopted by exchanges be sufficiently stringent to prevent market participants from availing themselves of Linked Pricing in a manner that would jeopardize the ability of the no-rebate Test Group to provide valuable data on the impact of the absence of rebates (or a rebate-like incentive) on order routing behavior, execution quality, and market quality or that would permit market participants to unfairly exploit this aspect of the Pilot.[257]

The Commission continues to believe that permitting exchanges to adopt rules to offer Linked Pricing to their registered market makers for securities in the no-rebate Test Group preserves the ability of an exchange to attract market makers through non-rebate incentives and thereby helps maintain the baseline framework in which exchanges can provide incentives to their registered market makers.[258] Commenters highlighted the importance of ensuring that any new rules that exchanges propose to provide Linked Pricing to registered market makers in the no-rebate Test Group be designed so as to not inhibit the Pilot's ability to

[248] NYSE Letter I, at 12.

[249] *See* Proposing Release, *supra* note 2, at 13023–24.

[250] *See* RBC Letter I, at 3; MFS Letter, at 2–3.

[251] As is the case for any fee or fee change an exchange adopts, if an exchange were to propose such a fee change it would need to analyze in its Form 19b-4 filing how its fee change constitutes an ''equitable allocation'' of ''reasonable'' fees and how it is not ''unfairly discriminatory.'' *See* 15 U.S.C. 78s(b)(3)(A)(ii).

[252] *See* IEX Letter I, at 7–8; Norges Letter, at 2.

[253] IEX Letter I, at 7.

[254] *See* Proposing Release, *supra* note 2, at 13024.

[255] *See id.* at 13024 n.140.

[256] *See* Clark-Joseph Letter, at 2–3.

[257] *See, e.g.,* Brandes Letter, at 2; Themis Trading Letter I, at 3; CFA Letter, at 7; Clearpool Letter, at 4; Healthy Markets Letter I, at 33; Decimus Letter, at 6 n.22.

[258] *See* Proposing Release, *supra* note 2, at 13024.

generate useful data on the impact of rebates on order routing behavior, execution quality, and market quality. The Commission agrees that if they are not narrowly tailored, these non-rebate incentive programs could continue to potentially distort transaction fee pricing, particularly if the exchange's fees are set at a subsidy level above the natural equilibrium within the current regulatory structure to subsidize these market maker incentives.

Rather, the market maker exception to Linked Pricing is intended to permit an exchange to impose rules for its registered market makers in ways that would improve its market in a meaningful way, such that it could use the enhanced liquidity provided by its registered market makers to improve its displayed quotation and thereby attract buyers and sellers to the exchange.[259] The non-rebate incentives would only apply to trading activity by a registered market maker in its capacity as a market maker (*i.e.,* acting as principal), and would not apply to any customer activity or activity from other trading desks or business units affiliated with the market maker (and possibly using the same MPID), be it agency, principal or riskless principal trading, traded by or through such market maker. Accordingly, only a registered market maker's principal trading activity in its capacity as a registered market maker in the no-rebate Test Group would be able to satisfy any market quality metrics, and the only trades that would be eligible to receive the non-rebate incentive pricing would be a registered market maker's principal trades in its capacity as a registered market maker in the no-rebate Test Group securities.

8. Control Group

The Commission proposed that Pilot Securities that are not placed in one of the Test Groups would be placed in the Control Group.[260] One commenter addressed the Control Group and supported the Commission's proposed approach.[261] The Commission continues to believe that a control group is vital to test the effects of fee changes in the Test Groups, as a control group subject to the current access fee cap would provide an appropriate baseline for analyzing the effects of the Pilot against the status quo.[262] For these reasons and the reasons discussed in the Proposing Release, the Commission is adopting the Control Group as proposed, which will be subject to the current Rule 610(c) access fee cap.[263]

9. Alternative Designs

a. Include a Trade-At Requirement

In the Proposing Release, the Commission asked whether the Pilot should include a ''trade-at'' provision that would restrict price matching of protected quotations.[264] Several commenters supported including a trade-at requirement because they believed doing so would increase the amount of liquidity available on exchanges and thereby further price discovery.[265]

In contrast, other commenters opposed including a trade-at requirement as they believed doing so would increase the Pilot's complexity; impact the ability of the data to assess the impact of transaction fees and rebates on order routing, execution quality, and market quality; be inconsistent with, or unnecessary for, a study of the issues pertinent to the Pilot; and be anti-competitive.[266] In addition, two commenters noted that a trade-at requirement would not be necessary because the reduction in the fee cap ultimately could result in more volume being executed on exchanges.[267]

The Commission believes that adding a trade-at requirement would unnecessarily complicate the Pilot in a manner that would increase costs on market participants and potentially impact the ability of the Pilot to isolate the effects of changes in exchange transaction fees and rebates. Accordingly, the Commission is not including a trade-at requirement in the Pilot. If the Pilot were to also assess the impact of a trade-at requirement, it would need to increase the number of Test Groups, thereby increasing the number of securities included in the Pilot, to be able to isolate the effects of a trade-at requirement separately from the effects of changes in exchange transaction fees and rebates. The Commission believes any potential benefits from analyzing the impact of a trade-at requirement do not justify the additional costs that expanding the Pilot would impose. Rather than introduce another variable into the Pilot, the Commission believes that the Pilot should remain focused on permitting an analysis, in the context of our current market structure, of the effect of exchange transaction fees and rebates. Further, the Commission notes that the Tick Size Pilot featured a trade-at test group, so as that pilot's post-pilot period concludes, the Commission will have access to current data to analyze the impact of a trade-at prohibition in the context of that pilot.[268]

b. No Fee Cap Test Group

Several commenters advocated for including a Test Group that does not cap transaction fees, believing that it is important to test whether competition alone can constrain pricing and result in a natural equilibrium transaction fee.[269] One commenter noted that currently fees tend to ''cluster'' at the access fee cap imposed by Rule 610(c) and as such recommended including an additional Test Group that does not cap fees.[270]

When it adopted Rule 610(c), the Commission explained that the access fee cap is necessary to, among other things, inhibit the ability of exchanges to take advantage of the Order Protection Rule by acting as a ''toll booth'' between price levels and ensure that quotations are fair and useful by limiting the ability of high fees to distort the price of displayed limit orders.[271]

The Commission believes that the no-rebate Test Group will permit analysis of the impact of competitive forces on fees in the absence of current practices

[259] *See id.* While it will be up to each individual exchange to design market quality metrics for offering non-rebate Linked Pricing to their registered market makers, such metrics could include, for example: (1) Requirements to trade to stabilize the market; (2) requirements on consecutive price changes and price continuity; (3) material time quoting on both sides of the NBBO; (4) materially enhanced quoted depth on both sides of the NBBO; (5) frequency of setting an improved BBO on the exchange; (6) frequency of setting an improved NBBO; and (7) compliance with narrow maximum quote widths.

[260] *See* Proposing Release, *supra* note 2, at 13024.

[261] *See* Healthy Markets Letter I, at 19.

[262] *See id.*

[263] *See* 17 CFR 242.610(c). Consistent with Rule 610(c), the Control Group will only cap fees for taking (removing) a protected quotation; it will not apply to fees for posting liquidity or otherwise cap or prohibit rebates. *See also* Proposing Release, *supra* note 2, at 13024.

[264] *See* Proposing Release, *supra* note 2, at 13025. A ''trade at'' provision would require that orders be routed to a market with the best displayed price or be executed at a materially improved price.

[265] *See e.g.,* Adorney Letter, at 1; Birch Bay Letter, at 1. In addition, in clarifying its position on rebates in equity market structure, NYSE stated that it could support a prohibition on rebates if ''done in a measured manner that creates an offsetting incentive to display liquidity, such as a 'Trade At' provision[ ]'' which the Pilot does not provide. NYSE Letter II, at 5.

[266] *See, e.g.,* MFA Letter, at 3; ICI Letter I, at 3; BlackRock Letter, at 2; FIA Letter, at 5; SIFMA Letter, at 4; Fidelity Letter, at 10; Citadel Letter, at 6–7; Citi Letter, at 3.

[267] *See* SIFMA Letter, at 4; Citi Letter, at 3.

[268] *See also infra* Section IV.E (discussing trade-at).

[269] *See, e.g.,* Clark-Joseph Letter, at 2; Nasdaq Letter I, at 13; Cboe Letter I, at 27–28.

[270] *See* Barnard Letter, at 1. Another commenter recommended including a Test Group that did not cap fees because it believed that the current structure encourages exchanges to charge fees for data feeds and technology services, which the commenter suggests are higher than they otherwise would be if transaction fees were not capped. *See* Modern IR Letter, at 3.

[271] NMS Adopting Release, *supra* note 10, at 37545.

that use fees to subsidize those rebates. Specifically, to the extent exchanges will no longer need to charge access fees up to $0.0030 to subsidize rebates in that Test Group, the Commission believes that competitive forces among the exchanges may result in fees approaching a new equilibrium level, within the current regulatory structure, for stocks in the no-rebate Test Group.[272]

The Commission notes that the order protection requirements of 17 CFR 242.611 (Rule 611) will continue to apply to all of the Pilot Securities including those in the no-rebate Test Group. As such, the basis for imposing a fee cap (summarized above) remains intact during the Pilot and the Commission believes that applying the current fee cap to the no-rebate Test Group will guard against the possibility, albeit highly unlikely, that an outlier exchange could seek to charge exorbitant fees for the no-rebate Test Group stocks that would be inconsistent with the rationale behind the Rule 610(c) fee cap.[273]

c. Basis Point Pricing

Two commenters recommended that, because stock prices have increased (*i.e.,* a number of high profile stocks currently trade above $100 per share), using basis point pricing may be a better reference point than using the current access fee cap because the current access fee cap can impact stocks differently based on their price.[274] Specifically, one of these commenters proposed that ''Test Group 1 contain the same constraints as Test Group 3 but with an access fee limitation expressed in basis points.'' [275] However, the Commission believes that doing so would increase the Pilot's complexity and could interfere with the Pilot's ability to provide useful data to assess the impact of the current exchange fee models on order routing behavior, execution quality, and market quality because exchange transaction fees and rebates are currently not assessed in basis points and thus this would introduce a new variable into the Test Group as it could raise or lower the fees depending on a stock's share price, which can vary over time. The more variables that are introduced, the more difficult it could be to isolate the effects of a particular change and uncover causal connections. Accordingly, the Commission is not adopting a requirement that one of the Test Groups include an access fee cap expressed in basis points.

d. Higher Fee Caps and Fees Based on Tick Size

Four commenters addressed a question in the Proposing Release about including a Test Group that would allow for access fees higher than the current cap under Rule 610(c).[276] One of these commenters specifically recommended reducing access fees to $0.0005 per share for the most liquid securities, while imposing gradually higher access fees for stocks of lower liquidity, up to a cap of potentially $0.0050 for the least liquid securities.[277] Another commenter recommended including an additional Test Group with an access fee cap of $0.0040, believing this would provide data to test whether an increase in the fee cap reduces bid-ask spreads in light of the many comments contending that spreads will increase in conjunction with lower rebates connected to a reduced access fee cap.[278] In addition, one commenter suggested that if tick sizes were set based on the characteristics of an individual stock, the transaction fee cap could then be a particular percentage of the tick size.[279] Such an approach could result in an access fee cap above $0.0030 per share for certain securities.

The Commission has carefully considered these suggestions. As discussed above, other commenters have noted that the current access fee cap was set thirteen years ago when markets and technology were markedly different.[280] Indeed, a few commenters argued it was outdated and too high.[281] Accordingly, the Commission does not believe that raising the access fee cap to levels that are above what trading centers were charging thirteen years ago necessarily is consistent with the technological efficiencies that have been realized in the intervening years. While market-based solutions and even regulatory responses to enhance the investor experience with trading in thinly-traded securities are worthy of attention, and were the subject of a recent Division of Trading and Markets staff roundtable, the Commission does not believe that the Pilot should introduce the potential for higher rebates—and the further exacerbated distortions that would likely accompany them—when it is attempting to study the effect of the current exchange fee models and fee and rebate levels.[282] Accordingly, the Commission is not adopting a higher fee cap in any of the Pilot's Test Groups.

e. Order Protection Rule

The Commission solicited comment on whether it would be appropriate to suspend the Rule 611 order protection requirements in one or more Test Groups.[283] In response, three commenters opposed eliminating the order protection requirements within the Pilot because doing so would increase the cost and complexity of the Pilot, and also could complicate analysis of the Pilot's results to the extent it clouded the focus on transaction fees and rebates.[284]

In contrast, one commenter recommended eliminating the order protection requirements for securities in the no-rebate Test Group.[285] This commenter stated that prohibiting rebates is insufficient to ''remove the perceived or real conflicts on broker routing or materially address'' various negative effects that the commenter believed Rule 611 has had on the equities markets.[286]

After considering the comments received, the Commission believes that the Pilot should not introduce additional variables by, in this case, removing the Rule 611 protected quotation status for automated quotations in any particular Test Group. In order to add a new variable to the Pilot, the Commission would need to include additional Test Groups and increase the number of securities in order to be able to isolate separately the effects of each variable that is included

[272] *See, e.g.,* Goldman Sachs Letter, at 2 (characterizing $0.0030 as an ''outdated benchmark'' that ''is too high and far from representative of true prices in the marketplace'').

[273] The Commission notes that the Proposal included a question regarding whether a fee cap would continue to be necessary to constrain exchange pricing if equilibrium pricing is achieved and the Commission expects that some market participants may analyze the Pilot results for answers to this question. *See* Proposing Release, *supra* note 2, at 13025.

[274] *See* Clearpool Letter, at 3; Cboe Letter II, at 8–9. Another commenter also stated that it thought it was ''a worthwhile exercise to explore the possibility of a move to basis points. . . . '' *See* Citi Letter, at 6.

[275] *See* Clearpool Letter, at 3.

[276] *See* Nasdaq Letter I, at 13; TD Ameritrade Letter, at 6; Angel Letter II, at 2; Cboe Letter II, at 8.

[277] *See* TD Ameritrade Letter, at 6.

[278] *See* Angel Letter II, at 2. *See also* Cboe Letter II, at 8.

[279] *See* Morgan Stanley Letter, at 3.

[280] *See supra* note 200 and accompanying text.

[281] *See id.*

[282] *See* Transcript of the Division of Trading and Markets' Roundtable on Market Structure for Thinly-Traded Securities (April 23, 2018), *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/thinly-traded-securities-rountable-042318-transcript.txt.*

[283] *See* Proposing Release, *supra* note 2, at 13025.

[284] *See* SIFMA Letter, at 4; JPMorgan Letter, at 3; Schwab Letter, at 3 (also stating that eliminating Rule 611 for certain Pilot Securities ''would significantly negatively impact retail order flow and the quality of trade execution'').

[285] *See* T. Rowe Price Letter, at 2–4.

[286] *See id.* at 4.

in the Pilot or else it would create an asymmetric Pilot that would make it more difficult to evaluate the data and establish causal inferences regarding the impacts of changes to exchange transaction fees and rebates. As discussed above, most commenters were critical of the Pilot's proposed size. The Commission desires to have a narrowly tailored pilot focused on generating useful data on the impact of exchange fees and rebates on order routing behavior, execution quality, and market quality. Adding another variable to the Pilot would increase the Pilot's complexity as well as costs of the Pilot.

f. Other Ideas for Additional Test Groups and Related Questions

In addition to the above questions, the Commission asked a number of other questions in the Proposing Release to solicit commenters' opinions on equities market structure issues and whether the Pilot should be used as a vehicle to further investigate other related areas. The Commission received a few comments on these points. For example, in response to a question about whether commenters believe the minimum trading increment should be reduced for the most actively traded NMS stocks if the Pilot's data suggests that rebates do not significantly improve market quality or execution quality for these securities, one commenter stated it ''would strongly support inclusion of a half-penny spread bucket, or consideration of a separate small-tick pilot for highly liquid stocks.'' [287]

Another commenter recommended that the Pilot test a prohibition on ''tiered pricing,'' whereby exchanges offer lower per share fees or greater per share rebates to market participants that transact in greater volumes, believing that absent such a prohibition, exchanges would continue to offer these incentives, which would serve ''to potentially work around the prohibition on offering rebates.'' [288]

Further, one commenter suggested adding a new Test Group ''to test an anti-fragmentation policy,'' in which ''the order that sets the SIP NBBO receives the execution in all circumstances (e.g., bypassing hidden orders).''[289]

The Commission appreciates all of these recommendations. After considering these comments, as well as other comments opposed to including more NMS stocks in the Pilot, the Commission believes that the Pilot should not introduce additional variables. In order to add a new variable to the Pilot, the Commission would need to include additional Test Groups and materially increase the number of securities (or materially increase the Pilot's duration) to be able to isolate separately the effects of each variable that is included in the Pilot. Otherwise, adding variables would create an asymmetric Pilot that would make it more difficult to evaluate the data and establish causal inferences regarding the impacts of changes to exchange transaction fees and rebates. As discussed above, most commenters were critical of the Pilot's proposed size and the Commission similarly desires to have a narrowly tailored pilot focused on generating useful data on the impact of exchange fees and rebates on order routing behavior, execution quality, and market quality. Adding another variable to the Pilot would increase the Pilot's size, complexity, and costs.

g. Gradual Reduction of Current Fee Cap Across All Stocks

One commenter suggested that, rather than conducting the Pilot, the Commission should instead consider imposing a ''gradual reduction of the current fee cap across all stocks periodically.'' [290] The commenter stated that this approach would facilitate data collection and an opportunity ''to observe order routing behavior changes, while applying the same economics to all stocks uniformly.'' [291] Furthermore, the commenter stated that if a control group was necessary in this scenario ''for comparison purposes'' it would recommend placing 50% of stocks in the control group and the other 50% in the Test Group subject to the gradual reductions in access fees.[292]

The Commission has considered this alternative but believes that the Pilot is a preferable approach because it will permit researchers to conduct differences-in-differences analysis over a much shorter time frame. By establishing stratified treatment groups and simultaneously testing different changes in the same variable, the Pilot will reduce the impact of events (economic, natural, political, etc.) across time and thereby is more conducive to an apples-to-apples comparison of the various treatment groups to one another. Pursuing a simultaneous and linear gradual reduction, such as that proposed by the commenter, could require greatly extending the Pilot's duration depending on the number of fee cap levels to be tested. More importantly, this proposed alternative would not provide the Commission with the opportunity to directly observe the impact of rebates on order routing behavior, execution quality, and market quality because it would not necessarily include a prohibition on rebates and therefore having a no-rebate bucket will be substantially more informative. Lastly, as the Commission believes that a Control Group is necessary to ensure the usefulness of the Pilot's data, pursuing the proposed structure would impact more NMS stocks than the Pilot (as 50% of stocks would be included in the Test Group and 50% in the control group).

h. $0.0010 Access Fee

One commenter recommended that rather than pursuing the Pilot, the Commission should instead amend Rule 610(c) to reduce the access fee cap to $0.0010 and also ''conduct an abbreviated study of the effects of eliminating rebates similar to the criteria of Pilot Test Group Three.'' [293] This commenter stated that ''there is broad recognition'' that the access fee cap should be reduced and the Pilot will ''be lengthy, complex and costly'' but ''will not yield a different conclusion.'' [294] The commenter stated that reducing the access fee cap to $0.0010 would be calibrated with present-day trading and execution costs, would better ensure displayed prices reflect the actual economic costs of an execution, and would allow exchanges to continue maintain their current net capture rates, while also choosing to offer rebates to incentivize liquidity provision if they chose to do so.[295]

The Commission believes that its revised Pilot design responds to this commenter's core recommendation, though the Commission is instituting a $0.0010 fee cap as part of the Pilot and not as an amendment to Rule 610(c). The Commission continues to believe that a Pilot is necessary to provide data to objectively evaluate the effect of exchange fees and rebates. Ultimately, the Pilot will enable a data-driven analysis of the impact of transaction fees and rebates on order routing behavior, execution quality, and market quality, which will serve as a valuable precursor to the Commission's consideration of future policy making in this area.

10. Metrics To Assess the Pilot

A number of commenters recommended that the Commission

[287] Pragma Letter, at 4. *See also* Proposing Release, *supra* note 2, at 13025.

[288] *See* Clearpool Letter, at 3–4.

[289] *See* Birch Bay Letter, at 2.

[290] Morgan Stanley Letter, at 2.

[291] *Id.*

[292] *Id.*

[293] *See* Goldman Sachs Letter, at 1–4.

[294] *Id.* at 1.

[295] *Id.*

more clearly articulate what it believes would constitute a ''successful'' Pilot and how it will judge whether the Pilot achieves that measure of success.[296] Several of these commenters suggested specific metrics or criteria they thought the Commission should analyze when evaluating the impact of the Pilot, many of which were measurement criteria suggested by EMSAC.[297] One commenter suggested that the Commission provide guidance about how its staff will be evaluating the metrics used to determine whether to recommend market structure changes to the Commission following the Pilot.[298] In addition, two commenters suggested the Commission designate an independent third party to conduct an analysis of the Pilot data upon the Pilot's completion.[299] Another commenter stated that the ''industry should be afforded the opportunity to comment'' on the metrics and criteria used to evaluate the Pilot.[300]

In response to these comments, the Commission emphasizes that its staff will likely not be the sole entity analyzing data related to the Pilot. As was the case for the recent Tick Size Pilot, the Commission believes that market participants will publish their own analyses of the Pilot using data that is uniquely available to them and the metrics that they believe are most useful or relevant, and encourages market participants to do so.[301] To the extent that interested parties prepare their own analyses, they may submit them to *tradingandmarkets@sec.gov* with the words ''Transaction Fee Pilot Analysis'' in the subject line, and the Commission will post those reports on its public website.[302]

The Commission encourages market participants to make public any analysis they perform on their own trading activity, such as non-proprietary transaction cost analysis (''TCA''), so that it may be publicly reviewed and used to help inform the public dialogue concerning the effect of exchange fees and rebates.[303] To the extent that independent analyses are made public, they can contribute to the Commission's consideration of any future regulatory action in this area.

Given the valuable input of independent analysis, the Commission believes that the success or failure of the Pilot will be determined by whether it produces an exogenous shock that generates measurable responses capable of providing insight into the effects of fees and rebates on the markets and market participant behavior.[304] In the absence of a Commission Pilot that effects change across all equities exchanges in a coordinated manner, researchers would be unable to collect meaningful, comparative data to test the effects of such changes and perform those analyses.[305]

Success or failure of the Pilot is thus independent of the outcome of the Pilot. For example, a Pilot that shows, with statistical significance, that rebates narrow the quoted spread in thinly-traded stocks would be equally ''successful'' as a Pilot that shows that rebates do not narrow the spread in such stocks. In this sense, the ''success'' of the Pilot is that it created the conditions that permit measurement and analysis of that issue in a manner that helps resolve speculative assumptions among the commenters about the impact of fees and rebates.

Furthermore, it is worth noting that the data collected pursuant to Rule 610T is only part of what researchers will need to conduct analysis of the impact of exchange fees and rebates on the markets. For example, the Pilot's order routing datasets contain data to help assess order routing and certain aspects of execution quality, but will not contain any data on exchange quotations, which is available from existing sources. Consequently, researchers will need to use existing data sources to assess the impact of the Pilot on exchange quoting activity and market quality. As such, to the extent that the Pilot data produces null results, for example the Pilot's order routing datasets do not show any change in liquidity during the Pilot, the Commission believes that independent analysis from market participants, looking at order-level data, may nevertheless detect an impact. Even if the Pilot produces a null result for some metrics, and third-party analysis is not publicly available or does not find an impact, the Commission nevertheless believes the Pilot would still be useful to inform future policymaking that is intended to benefit investors.[306]

In response to commenters' requests for additional insight into the types of questions that the Commission hopes the Pilot will be able to answer, the Commission believes that the order routing datasets, as well as other data that is already readily accessible to researchers, should facilitate analysis of the impact of the Pilot through a broad spectrum of metrics. In particular, the Commission will consider, and encourages others to consider, the following questions in contemplating the impact of changes to fees and rebates across the exchanges. These questions include, but are not limited to:

[296] *See, e.g.,* State Street Letter, at 2; Fidelity Letter, at 3–4; Capital Group Letter, at 4; ICI Letter I, at 5; OMERS Letter, at 2; MFS Letter, at 2; Virtu Letter, at 8; FIA Letter, at 2; SIFMA Letter, at 2–3, 5; TD Ameritrade Letter, at 2; STANY Letter, at 3; Morgan Stanley Letter, at 3; Cboe Letter I, at 29; Nasdaq Letter I, at 7; NYSE Letter, at 2; Pragma Letter, at 2; ModernNetworks Letter; Healthy Markets Letter I, at 35.

[297] *See, e.g.,* State Street Letter, at 2–3; Fidelity Letter, at 8; Vanguard Letter, at 3; ICI Letter I, at 5; T. Rowe Price Letter, at 4; MFS Letter, at 2; BlackRock Letter, at 2–3; SIFMA Letter, at 5–6; Morgan Stanley Letter, at 3; Spatt Letter, at 5; Cboe Letter I, at 29; IEX Letter I, at 2; Pragma Letter, at 2–3.

[298] *See* SIFMA Letter, at 3. Another commenter requested that the Commission clarify the role it expects the Division of Economic and Risk Analysis to play in analyzing the Pilot's data and provide an anticipated timeline for the issuance of a report on the Pilot data. *See* IEX Letter I, at 2.

[299] *See* Fidelity Letter, at 3, 8; MFS Letter, at 2.

[300] *See* Virtu Letter, at 8.

[301] For example, institutional firms could study their ability to capture the spread when passively posting, and how that is impacted within the Pilot's treatment groups.

[302] The Commission encourages market participants to disclose what sources of data they used for their analyses and describe the methodology they used, and to make those reports publicly and freely available.

[303] For example, the Pilot's order routing datasets will collect aggregated data, not individual order-by-order level data, and reflects the ''child'' orders that are processed by an exchange. Thus, the order routing dataset will not capture the entire lifecycle of a ''parent'' order from its inception through to execution. Accordingly, the Pilot's order routing datasets will not by themselves permit analyses on an order-by-order basis, and will therefore be unable to assess the execution quality of orders at the ''parent'' level. If market participants and other interested parties conduct parent order-level analyses and make their findings public, then the Commission would be able to consider them as it assesses the Pilot's ultimate impact on order routing behavior, execution quality, and market quality. *See, e.g.,* T. Rowe Price Letter, at 4 (recommending that the Commission view analyses of the Pilot conducted by registered investment advisers as a ''key input'').

[304] As noted in the Proposal, the Pilot is designed to produce an exogenous shock that simultaneously creates distinct fee environments, each of which restricts transaction-based fees or rebates differently, enabling synchronized comparisons to the current environment for purposes of inferring the existence of causal relationships. *See* Proposing Release, *supra* note 2, at 13047 and 53. An exogenous shock to a system occurs when an element of the system is changed from without the system. (*i.e.,* the change or shock is not under the control or influence of those within the system) but can induce endogenous (*i.e.,* within the system) responses. In the Pilot's context, the exogenous shock takes the form of a reduction of the maximum permissible transaction fees and a prohibition on rebates and Linked Pricing on all U.S. equities exchanges. *See infra* Section IV.

[305] *See infra* Section IV.B.1.

[306] For example, a result that shows no impact on liquidity for a Test Group may still be relevant to the Commission's consideration of the effects of transaction fee-and-rebate pricing models on order routing behavior, execution quality, and market quality and whether the existing exchange transaction-based fee and rebate structure continues to further the statutory goals.

1. To what extent do access fees and rebates impact routing decisions for liquidity-taking orders? Are orders to take liquidity more likely to be routed to an exchange (compared to an off-exchange venue or ATS) in a lower access fee environment than they are currently? To what extent are impacts or changes in routing decisions driven by potential conflicts of interest created by transaction fees and rebates rather than other factors such as fill rates and execution quality?

2. To what extent do access fees and rebates impact routing decisions for liquidity-supplying orders? Are orders to provide liquidity less likely to be routed to an exchange (compared to an off-exchange venue or ATS) in a lower rebate environment than they are currently? To what extent do impacts or changes in order routing appear to be driven by potential conflicts of interest caused by rebates rather than other factors such as execution quality (*e.g.,* fill-rates, time to fill, capturing the quoted spread, adverse selection, or reversion)?

3. What impact does a reduction or elimination in rebates have on the NBBO, including spread width and the depth of interest displayed at the NBBO? To what extent does a potential decrease in depth of interest at the NBBO result in lower fill rates or smaller fill sizes for investor orders? Are natural investors better able to obtain queue priority in exchange order books, and are they more frequently able to capture the quoted spread when posting passively (*e.g.,* buy on the bid and sell on the offer)?

4. Are there common characteristics for securities (*e.g.,* average daily trading volume, price, or market capitalization) where a reduction or elimination of rebates begins to impact quoted spread? If so, what are those common characteristics and at what level do reduced rebates begin to have an impact on quoted spread? To what extent does a change in quoted spread affect transaction costs for investor orders? If quoted spread widens in a security, to what extent is the potential spread cost offset by the reduction in the transaction fees paid, or a change in the ability to capture the quoted spread?

5. Are there common characteristics for securities where a reduction or elimination of rebates does not impact quoted spread? If so, what are those common characteristics (*e.g.,* average daily trading volume, price, or market capitalization)?

6. Are there common characteristics for securities (*e.g.,* average daily trading volume, price, or market capitalization) where a reduction or elimination of rebates begins to impact effective spread?

7. How can we best understand the effects of rebates provided on inverted venues (where rebates are paid to takers of liquidity)?

8. What impact do lower access fees and rebates have on the amount of displayed and non-displayed liquidity on exchanges?

9. In the absence of rebates, do competition and market forces operate to produce a market equilibrium (within the current regulatory structure) that constrains transaction fees to levels at or below today's current access fee cap? What do such market forces, and any resultant equilibrium pricing, tell us about the need to impose a cap on access fees? Does the Pilot provide any data that suggests, in the absence of rebates, an access fee cap would still be necessary as long as Rule 611 of Regulation NMS continues to impose order protection requirements on exchanges with protected quotes?

10. What is the impact of a lower fee cap on trading volumes on each exchange? What is the impact of a lower fee cap on other measures of liquidity on each exchange? How should we understand the difference between volume and liquidity?

11. What is the impact of lower rebates on the ability of smaller exchanges to attract liquidity-supplying orders?

By providing a mechanism that is uniquely capable of facilitating an empirical review of these and similar questions, the Pilot is an essential tool that can further the understanding of an important component of equities market structure. While other market structure issues also might benefit from a pilot, exchange transaction fees currently are a prime focus for empirical study, as evidenced by, among other things, the EMSAC's recommendation to the Commission and the number and nature of comments the Commission received on its proposal. Ultimately, the Commission desires to use the Pilot's results to help assess whether (and, if so, in which types of NMS stocks) rebates have a positive impact on execution and market quality, or whether they have no or little effect or a negative effect.

D. Timing and Duration

1. Disclosure Initiatives and the Pilot

While a number of commenters urged the Commission to proceed expeditiously with its proposed pilot,[307] other commenters believed the Commission should pursue different market structure initiatives before conducting the Pilot[308] or in lieu of the Pilot.[309] The Commission has adopted two of the market structure initiatives identified by commenters—namely, proposals to enhance the operational transparency of ATSs and to enhance disclosure of order routing behavior.[310]

While some commenters believed that the information and data from those new rules would complement the Pilot and ''improve understanding of pilot data,'' [311] others believed the new rules would instead allow the Commission to determine ''whether a problem exists without risking the potential negative impact of a pilot'' [312] or thought that potential conflicts of interest in order routing behavior would be better addressed through increased transparency and disclosure than by the Pilot.[313] The Commission disagrees. Comments urging the Commission to pursue disclosure-based initiatives focused only on one narrow aspect of

[307] *See, e.g.,* IEX Letter I, at 1; Joint Pension Plan Letter, at 2; Better Markets Letter, at 3; Brandes Letter, at 2; Clearpool Letter, at 7.

[308] *See, e.g.,* RBC Letter I, at 4; T. Rowe Price Letter, at 4; Citi Letter, at 2.

[309] *See, e.g.,* Nasdaq Letter I, at 1, 3 (''[A] transaction fee experiment is inappropriate at this time because there are alternatives and prerequisites the Commission must further evaluate.''); NYSE Letter I, at 17–19 (stating that the Commission should consider ''less costly and more effective alternatives'' to the Pilot); Cboe Letter I, at 12, 22, 27 (recommending that the Commission undertake a ''holistic examination of the entire equities market framework'' including consideration of ''possible changes to the Order Protection Rule [and] the Minimum Tick Increment Rule,'' ''[s]trengthening and [a]rticulating the Duty of Best Execution,'' providing ''greater broker-dealer transparency,'' and adopting amendments to Regulation ATS).

[310] *See, e.g.,* Nasdaq Letter I, at 1, 3; NYSE Letter, at 17–18; Cboe Letter I, at 12, 22, 27, Fidelity Letter, at 4. *See also* Securities Exchange Act Release Nos. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018) (''Regulation ATS–N'') and 34528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (''Amendments to Order Handling Disclosure'').

[311] ICI Letter I, at 5–6, 6 n.12; ICI Letter II, at 3. *See also, e.g.,* RBC Letter I, at 4; Citi Letter, at 2; Citadel Letter, at 3, 7 (stating that ''it is important to first finalize and implement . . . Rule 606 enhancements before implementing the Pilot'' to ''safeguard the integrity of the Pilot by ensuring that any changes to broker-dealer order routing practices that result from the increased transparency mandated by amended Rule 606 are isolated from any similar changes that result from the design of the Pilot''); Spatt Letter, at 4 (stating that the ''the enhanced disclosures proposed would strengthen the potential causal inference that the response to [the Pilot] would allow''). Some commenters questioned whether the Pilot should proceed, because they believed that the adoption of Regulation ATS–N and the Amendments to Order Handling Disclosure will ''impact the very potential conflicts of interest the Commission aims to study . . . .'' Nasdaq Letter II, at 2–4; *see also* NYSE Letter IV, at 2–3. As noted in this section, the scope of the Pilot is broader than just conflicts of interest. Therefore, those initiatives, or the impact they may have on order routing behavior, would not provide sufficient data to evaluate the effects of transaction fees and rebates on market quality and execution quality. *See infra* Section IV.B.1.

[312] Nasdaq Letter I, at 1–2, 4; Nasdaq Letter II, at 2–4 (suggesting that the adoption of these regulations ''further reduce[d] the already weak need for the [Pilot]''). *See also, e.g.,* STANY Letter, at 2; ASA Letter, at 5–6; Era Letter, at 1. *But cf.* Verret Letter I, at 4 (stating that the ''collection of data from broker-dealers'' or the use of ''existing data contained in [OATS]'' were not ''feasible alternatives,'' because a ''randomized trial is far superior for the purpose of generating robust statistical analysis to inform subsequent rulemaking''); Proposing Release, *supra* note 2, at 13046–47 (outlining the limitations of existing data sources).

[313] *See, e.g.,* STANY Letter, at 2; FIA Letter, at 3; Grasso Letter, at 2. *But cf.* ICI Letter II, at 3 (noting that disclosure-based rulemakings ''will not directly reduce the potential for exchange transaction pricing models to create conflicts of interest for broker dealers, nor will they provide data that would allow an institutional investor to measure the impact of fee avoidance on routing decisions''); Luminex Letter, at 1; Spatt Letter, at 4; IEX Letter II, at 9.

the Pilot—studying the conflicts of interest between brokers and their customers that are presented when exchanges pay rebates. However, such an approach does not adequately advance the Pilot's broader purpose—obtaining a better understanding of all potential impacts from fees and rebates, and how fees and rebates may affect stocks differently depending on their liquidity.

Similarly, some commenters recommended that, either before conducting the Pilot or in lieu of the Pilot, the Commission should pursue other market initiatives such as enhancing broker-dealers' duty of best execution [314] or undertaking a ''broader review of equity market structure,'' including the consideration of possible changes to the Order Protection Rule or the Minimum Tick Increment Rule.[315] Other commenters disagreed and did not believe that the Commission should delay the Pilot in order to pursue other market structure initiatives.[316] For example, a few commenters advocated proceeding with the Pilot because the Pilot may help to inform future policy changes in these other areas.[317] Other commenters characterized the ''holistic reform'' advocated by other commenters as ''an elusive goal'' [318] in light of market participants' competing interests—one that has been used to ''slow down market structure reform for the past decade.'' [319]

The Commission believes that there is no need to delay proceeding with the Pilot in order to pursue other potential equity market structure initiatives. The Pilot seeks to resolve several equity market structure questions that have been debated for several years. Similarly, the Commission does not believe that it needs to complete the Pilot before proceeding to consider other equity market structure initiatives. Other initiatives may implicate equity market structure questions that are narrower or broader than, or independent of, exchange fee models, such as considering innovative approaches to thinly-traded securities. The Commission expects that it will continue to evaluate the need for other changes to equity market structure during the Pilot.

2. Automatic Sunset at Year One

The Commission proposed that the Pilot have a duration of one year with a maximum period of two years. Specifically, the proposed Pilot duration featured an automatic sunset at the end of the first year unless, prior to that time, the Commission publishes a notice that the Pilot shall continue for up to one additional year.[320]

After careful consideration of the comments received, the Commission is adopting Rule 610T(c) as proposed. Many commenters supported the proposed duration of the Pilot.[321] For example, one commenter asserted that ''each pricing experiment needs to be in place for a sufficient length of time to enable the firms to adjust their routing logic.'' [322] Others agreed that the proposed duration would reduce the ''desire to 'wait out' the Pilot'' and would avoid ''the incentive to alter behavior in order to distort the Pilot's results . . . .'' [323] Several commenters supported the automatic sunset provision after one-year.[324]

A few commenters, however, thought the proposed duration was too short and that a minimum two-year pilot would be necessary.[325] Some other commenters believed that the necessary data could be obtained within a shorter time frame. Among commenters advocating for a shorter Pilot Period, the recommended duration varied and ranged from those who felt there would be an ''immediate and measurable impact upon implementation'' [326] to those who felt the appropriate time frame should be modified to an absolute maximum of one year.[327] One commenter questioned whether a ''1–2 year pilot that changes fees on 3,000 names'' was ''really a 'pilot' or in fact a de facto imposition of a significant reduction of transaction fees[.]'' [328] Several commenters expressed their view that the proposed length of the Pilot would ''exacerbate[ ] the negative impact upon the affected issuers.'' [329]

One commenter took issue with the proposed length of the Pilot by challenging what it believed to be conflicting statements of the Commission in its original Proposal. According to the commenter, the Commission asserted, on the one hand, that the ''market quickly reacts to changes in (and elimination of) pricing changes, but on the other hand, claims that the market does not react unless the changes are in effect for at least a year.'' [330] The Commission believes both of those statements are correct and do not conflict. While many market participants will react promptly to pricing changes, particularly those with cost-based routing algorithms, others may need additional time to fine tune liquidity-based routing algorithms as order flow changes in response to fee changes.[331] More importantly, however, the Pilot needs to be long enough to discourage any market participant inclined to resist adapting its behavior to the fee changes.[332]

A few commenters opposed the one-year sunset provision, but for a variety of different reasons. For example, one commenter thought a full two-year pilot was necessary, another thought the Commission separately has the authority to revise or terminate the Pilot early and does not need a sunset

[314] *See, e.g.,* Nasdaq Letter I, at 3–4; Fidelity Letter, at 6; Cboe Letter I, at 21–22.

[315] *See* Cboe Letter I, at 12; FIA Letter, at 3; Nasdaq Letter I, at 4.

[316] *See, e.g.,* IEX Letter II, at 9; Better Markets Letter, at 3; Brandes Letter, at 2; AJO Letter, at 2; OMERS Letter, at 3; Clearpool Letter, at 7. Some of these commenters suggested that the Pilot should proceed in conjunction with action on other market structure initiatives. *See, e.g.,* SIFMA Letter, at 1; Pragma Letter, at 3–4.

[317] *See, e.g.,* Verrett Letter I, at 5; Better Markets Letter, at 3.

[318] Brandes Letter, at 2.

[319] Themis Trading Letter I, at 6. *See also* ICI Letter I, at 3.

[320] *See* Proposing Release, *supra* note 2, at 13025. The Commission notes that the proposed language in Rule 610T(c)(a)(ii) has been modified slightly. As proposed, Rule 610T(c)(1)(ii) contained the phrase ''shall continue for up to another year.'' As adopted, the phrase ''shall continue for up to one additional year'' is being substituted for the phrase ''shall continue for up to another year'' to simplify the rule text without substantively changing the requirement.

[321] *See, e.g.,* SIFMA Letter, at 3; AGF Letter, at 2; Wellington Letter, at 2. *See also* RBC Letter I, at 6 (stating ''a pilot of at least one year and no more than two years will ensure that ample data is collected over time, that the restrictions of the various Pilot Test Groups cannot be evaded by delay, and that the Pilot does not exist for a period of time beyond which its data would be cumulative or of marginal significance relative to data produced earlier in the Pilot period'').

[322] *See* Citi Letter, at 5 (stating that ''[c]ost-sensitive firms may be able to more quickly adapt to new pricing, while liquidity-based routers may need time to collect a new sample set to adjust their routing logic,'' such that ''data in the weeks closer to the conclusion of the Pilot may more accurately reflect the state of the market and what the implications would be if implemented long-term''). One commenter, however, did not believe that certain ''broker-dealers, proprietary traders, and algorithm vendors'' would ''incorporate the new fees into their routing systems on a timely basis, if ever,'' because according to this commenter, ''[c]hanges are costly and may prove to be ultimately unnecessary if pricing reverts following the termination of the pilot study.'' Larry Harris Letter, at 11.

[323] Joint Asset Managers Letter, at 2. *See also* Joint Pension Plan Letter, at 2; Brandes Letter, at 2.

[324] *See, e.g.,* SIFMA Letter, at 3; CFA Letter, at 6; Fidelity Letter, at 9; IEX Letter I, at 4.

[325] *See, e.g.,* Babelfish Letter, at 3; Healthy Markets Letter I, at 19.

[326] *See* TD Ameritrade, at 5; *see also, e.g.,* NorthWestern Letter, at 1.

[327] *See, e.g.,* FIA Letter, at 4; STANY Letter, at 3–4.

[328] Magma Letter, at 3. *See also, e.g.,* Apache Letter, at 1; Unitil Letter, at 2.

[329] *See, e.g.,* Ethan Allen Letter, at 1; ProAssurance Letter, at 2; Knight-Swift Letter, at 2.

[330] NYSE Letter I, at 16.

[331] *See, e.g.,* Citi Letter, at 5; Babelfish Letter, at 3.

[332] *See* Proposing Release, *supra* note 2, at 13071.

provision, and a third was critical of the lack of metrics that would accompany the automatic sunset.[333]

After careful consideration of the comments received, the Commission is adopting the Pilot's duration as proposed. The Commission believes that the Pilot's duration will provide an appropriate balance between providing certainty about the maximum duration for the Pilot while also allowing flexibility to conduct a Pilot for more than one year if necessary to collect representative data. Further, the Pilot's duration should be long enough to make it economically worthwhile for market participants to adapt their behavior and not ''wait out'' the Pilot. In addition, in light of the number of Pilot Securities selected, which were selected to ensure sufficient statistical power to allow for meaningful analysis, the Pilot's duration will allow for the collection of a robust and representative data set over a sufficiently long period of time,. The Commission considered a shorter time period for the Pilot, but is concerned that short-term or seasonal events could unduly impact the Pilot results and therefore data collected over a shorter duration may not yield a sufficiently representative dataset that would be capable of permitting analysis into the impact of transaction-based fees and rebates and the effects that changes to those fees and rebates have on order routing behavior, execution quality, and market quality. For example, a shorter pilot period could be impacted by seasonal idiosyncrasies, macroeconomic factors, or even weather events.

Further, the Commission recognizes that some market participants, for example, broker-dealers whose liquidity-focused routing strategies are based on, and continually updated based on, several weeks' worth of data, will need time to fine tune their revised routing strategies. While some market participants may adjust quickly, others, like proprietary trading market participants, may wait to see how other market participants react before refining their own routing strategies.[334] In other words, it could take a few months before some market participants finish calibrating their routing strategies to the fees and rebates that the exchanges adopt consistent with the Pilot's requirements and adjust them as trading dynamics settle in response to those changes. The exchanges also could take a number of weeks to settle on new fee models as they see how other exchanges modify their fee models to comply with the Pilot's requirements and then respond accordingly, which could further delay the time it takes for broker-dealers to adjust their routing and trading algorithms. Accounting for all of this, the Commission intends that the proposed duration of the Pilot be long enough to encourage wide participation by all market participants (and discourage ''waiting out'' the Pilot) and thereby help ensure that the Pilot produces results that are more reliable, robust, and useful.

The Commission also considered extending the Pilot period to two-years as suggested by several commenters, and as was recommended by the EMSAC, but continues to believe that the inclusion of the automatic sunset provision at the end of the first year is preferable because it will provide flexibility in the event that the Commission believes additional time is necessary to ensure the collection of a robust dataset with adequate statistical power for analysis, but will allow the Pilot to automatically end after one-year in the event that sufficient data is collected by that point with sufficient statistical power to allow for meaningful analysis.

3. Pre- and Post-Pilot Periods

The Commission proposed a six-month pre-Pilot Period as well as a six-month post-Pilot Period.[335] During those periods, the Commission proposed to require the equities exchanges to collect and make available the order routing datasets and Exchange Transaction Fee Summaries in order to provide necessary benchmark information against which researchers could assess the impact of the Pilot.[336]

Two commenters supported the proposed six-month pre-Pilot and post-Pilot data collection periods.[337] In contrast, two commenters suggested adopting three-month long pre-Pilot and post-Pilot Periods.[338]

The Commission desires to implement the Pilot in a manner that imposes the least amount of costs on the exchanges without compromising the ability of the Pilot to obtain useful data. The Commission believes that six-month pre- and post-Pilot Periods are necessary to establish a baseline against which to compare the data collected during the Pilot Period and any post-Pilot effects following the conclusion of the proposed Pilot. Although the Commission appreciates the desire of market participants to expedite the Pilot while constraining costs, the Commission considers six months to be necessary to provide the targeted statistical power for obtaining baseline data. As discussed above, statistical power largely is a function of the number of observations over a specified period of time. In order to shorten the pre- and post-Pilot Periods (*e.g.,* to three months instead of six months) while maintaining the same statistical power, the Commission would need to increase the number of securities in the Pilot by at least 120 securities. As discussed above and consistent with the comments it received, the Commission desires to limit, not increase, the number of securities included in the Pilot. Accordingly, the Commission is not adopting a shorter duration for the pre- and post-Pilot Periods.

4. Early Termination

Proposed Rule 610T did not contain a specific provision regarding early termination of the Pilot. Several commenters recommended that the Commission develop specific criteria for evaluating the possibility that the Pilot may need to be terminated early.[339] Some recommended that the Pilot specifically include a ''kill switch'' to effectuate an early termination.[340] Several commenters supported the need for the Commission to address unanticipated negative consequences quickly,[341] but one commenter cautioned that the Commission would need to act in a measured manner because the industry would need time to unwind the Pilot.[342] One commenter suggested that the Commission might want to terminate the Pilot early if (1) it produced a ''robust statistical sample set earlier than a year, such that [the Commission could] end the Pilot and proceed to adopt permanent rule changes'' and (2) ''if there is unintended impact from the Pilot that warrants a

[333] *See* Babelfish Letter, at 3; Healthy Markets Letter I, at 19; Cboe Letter I, at 19.

[334] *See, e.g.,* Citi Letter, at 5.

[335] *See* Proposing Release, *supra* note 2, at 13025–26. *See also* Proposed Rule 610T(c).

[336] Proposed Rule 610T(d) and (e). *See also* Proposing Release, *supra* note 2, at 13029, 13032. Primary listing exchanges will also be required to prepare and publicly post updated Pilot Securities Exchange Lists and Pilot Securities Change Lists for the duration of the Pilot Period and through the post-Pilot Period. *Id.* at 13027–28. The *pre*-Pilot data is intended to establish a baseline against which to assess the effects of the Pilot, while the *post*-Pilot Period is intended to help assess any post-Pilot effects following the conclusion of the Pilot.

[337] *See* FIF Letter, at 7, 9; Healthy Markets Letter I, at 19.

[338] *See* IEX Letter I, at 4; FIA Letter, at 4.

[339] *See e.g.,* SIFMA Letter, at 3; Issuer Network Letter I, at 4; State Street Letter, at 4; Cboe Letter I, at 28.

[340] *See* Citi Letter, at 4; TD Ameritrade Letter, at 1, 5; Morgan Stanley Letter, at 4; Cboe Letter I, at 28–29; Vanguard Letter, at 3; STANY Letter, at 4; Angel Letter II, at 3.

[341] *See* Schwab Letter, at 2; Cboe Letter I, at 29.

[342] *See* TD Ameritrade Letter, at 5. *See also* Morgan Stanley Letter, at 4; SIFMA Letter, at 3.

stoppage.'' [343] Other commenters emphasized the need for the Commission to closely monitor the impact of the Pilot on retail investors in particular.[344] For example, one commenter argued that if the Pilot data suggests ''clear harm to the retail investor in . . . relevant execution quality metrics'' like ''quoted spread, depth of liquidity, intraday stock volatility, and opportunities for price improvement on impacted securities,'' then the Pilot ''should be immediately suspended.'' [345] Another commenter urged the Commission to closely monitor the Pilot's effect on thinly-traded stocks and establish ''predetermined means for discontinuing the Pilot in the event that the reviewed data shows undue harm to market or execution quality.'' [346] However, one commenter noted that the Commission is not obligated to ''cease the [P]ilot if the costs to liquidity prove significant.'' [347]

The Commission acknowledges the concerns raised by commenters regarding the potential for unintended and unanticipated consequences to the equities markets that the Pilot may have. The Commission intends to carefully monitor for any such effects during the Pilot Period. However, the Commission does not believe that it is necessary to add a ''kill switch'' to Rule 610T because the Commission already has broad exemptive authority that obviates the need for a separate kill switch. For example, if at any time the Commission believes that the protection of investors may be compromised by the Pilot, the Commission has broad authority under Section 36 of the Exchange Act to modify or terminate the Pilot early.[348]

5. Inclusion of a Phase-In Period

The Commission did not propose a phase-in period for the Pilot. Three commenters recommended a phase-in period without elaborating on its purpose, though they referenced the EMSAC's recommendation for an initial three-month phase-in period involving 10 stocks.[349] A different commenter did not believe that the EMSAC's three-month phase-in period was necessary.[350]

The Commission has considered these comments and believes a phase-in approach is not necessary and unnecessarily would add to the length of the Pilot. Although such an approach would allow the markets and market participants to implement the required fee changes in a staged manner and provide an opportunity to address unforeseen implementation issues, the Commission continues to believe that, because exchange fees can become immediately effective upon their filing with the Commission, the markets and market participants are accustomed to dealing with frequent exchange fee changes in which fees can change on all stocks at once, or only for a subset of stocks or a subset of trading mechanisms. Accordingly, exchanges and market participants should be capable of accommodating the terms of the proposed Pilot with the advance notice contemplated by the Pilot. Further, although exchanges would be required to collect and report certain data, the proposed Pilot would not necessitate changes to exchange trading systems, and therefore, the Commission continues to believe a phased implementation schedule is not necessary to test the types of changes contemplated by the Pilot.

E. Data

The Commission proposed that certain data be collected and made publicly available in order to facilitate the Commission's and researchers' ability to assess the impact of the Pilot, as well as to promote transparency about the Pilot Securities and to provide basic information about equities exchange fees and changes to those fees during the Pilot.[351] The Commission is adopting the Pilot Securities Lists, the Exchange Transaction Fee Summary, and the order routing datasets subject to the modifications described below.

1. Pilot Securities Exchange Lists and Pilot Securities Change Lists

As proposed, the Commission would publish, approximately one month before the start of the Pilot Period, the initial *List of Pilot Securities,* which identifies the securities in the Pilot and their designated Test Group (or the Control Group).[352] Thereafter, each primary listing exchange [353] would publish a freely and publicly available daily *Pilot Securities Exchange List* of the Pilot Securities that are primarily listed on its exchange and also publish a *Pilot Securities Change List* of the cumulative changes to that list, and keep both lists available on their websites for five years.[354]

The Commission received one comment that was supportive of the proposed requirements for disseminating and updating the Pilot Securities lists, including the pipe-delimited ASCII file format and the five year retention period.[355] This commenter also had ''no objections to the proposed posting requirements, providing there is adequate data security and controlled access.'' [356] The Commission is not adopting any new requirements for data security with respect to the Pilot Securities lists because that data is not private or otherwise sensitive in nature and because the exchanges already are subject to Regulation SCI governing access to their systems that support trading.[357]

For the reasons stated in the Proposing Release, the Commission is adopting as proposed the requirements in Rule 610T(b) for the primary listing exchanges to publicly post on their websites downloadable files containing the Pilot Securities Exchange Lists and the Pilot Securities Change Lists.[358] The Commission is adding one additional

[343] *See* Vanguard Letter, at 3. *See also* Angel Letter II, at 3 (noting that the Pilot could be suspended quickly if ''there is abundant evidence one way or the other about the results,'' such as ''a dramatic increase in market quality for one particular treatment group,'' in which case ''that particular group's treatment could become the new rule,'' or ''if the pilot produces fast and unequivocal results showing harm to one particular treatment group, that treatment should be halted'').

[344] *See* Schwab Letter, at 2; Citi Letter, at 4.

[345] *See* Schwab Letter, at 2.

[346] *See* STANY Letter, at 4.

[347] Verret Letter I, at 5.

[348] *See* 15 U.S.C. 78mm (setting forth the Commission's authority, by rule, regulation or order, to conditionally or unconditionally exempt persons, transactions or securities (or classes thereof) from any Exchange Act provision, rule or regulation if such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors).

[349] *See* State Street Letter, at 4; TD Ameritrade Letter, at 4; STANY Letter, at 3. *See also* Recommendation for an Access Fee Pilot (July 8, 2016), *available at https://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf* (''EMSAC Pilot Recommendation'').

[350] *See* AJO Letter, at 2.

[351] *See* Proposing Release, *supra* note 2, at 13026.

[352] *See* Proposed Rule 610T(b)(1). *See also* Proposing Release, *supra* note 2, at 13026. When the Commission publishes this list, the pre-Pilot Period will have been in place for approximately five months.

[353] *See* Proposed Rule 610T(b)(1)(iii) (defining ''primary listing exchange'' for purposes of Rule 610T).

[354] *See* Proposing Release, *supra* note 2, at 13027–28. The Commission notes that the proposed language in Rule 610T(b)(3)(i) has been modified slightly. As proposed, Rule 610T(b)(3)(i) contained the phrase ''throughout the duration of the Pilot, including the post-Pilot Period.'' As adopted, the phrase ''throughout the end of the post-Pilot Period'' is being substituted for the phrase ''throughout the duration of the Pilot, including the post-Pilot Period'' to simplify the rule text without substantively changing the applicability of the posting requirement.

[355] *See* FIF Letter, at 5.

[356] *Id.*

[357] *See* 17 CFR 242.1001(a)(1). SCI systems include all computer, network, electronic, technical, automated or similar systems of, or operated by or on behalf of, an SCI entity that directly support activities such as trading and order routing, among other things. 17 CFR 242.1000.

[358] *See* Proposing Release, *supra* note 2, 13026–28.

field, ''stratum code,'' to both lists.[359] As discussed in the Proposal and above, the Commission will stratify Pilot Securities as it assigns them to the Test Groups and Control Group to ensure that each group has a similar composition, which facilitates comparison across groups.[360] As it does so, the Commission will assign a stratum code to each Pilot Security that identifies that security's liquidity strata. The code is a static value and, as such, will remain constant throughout the Pilot. The Commission will include this stratum code on the initial List of Pilot Securities that it disseminates. To link each Pilot Security and its stratum code, the Commission is requiring the primary listing exchanges to include this data element on each Pilot Securities Exchange List and Pilot Securities Change List. Including this field on each list will clearly identify each Pilot Security's liquidity stratum, thereby allowing researchers to control for the fact that within some liquidity strata, the ratio of Test Group stocks to Control Group stocks is lower than it is for others, which should facilitate analysis of the Pilot's data.

2. Exchange Transaction Fee Summary

As proposed, each exchange that trades NMS stocks would be required to compile, update monthly, and make freely and publicly available a dataset using an XML schema published on the Commission's website that contains specified information on its fees and fee changes during the Pilot.[361]

In particular, each exchange would identify, among other things, the ''Base'' take fee (rebate), the ''Base'' make rebate (fee), the ''Top Tier'' take fee (rebate), and the ''Top Tier'' make rebate (fee), as applicable, as well as the Pilot Group (*i.e.,* 1, 2, or Control) that applies to the fee being reported.[362] Exchanges also would calculate the ''average'' and ''median'' per share fees and rebates, which the exchange would compute as the monthly realized average or median per-share fee paid or rebate received by participants on the exchange during the prior calendar month, reported separately for each participant category (registered market makers or other market participants), Test Group, displayed/non-displayed, and top/depth of book.[363]

In the Proposing Release, the Commission asked several questions about the Exchange Transaction Fee Summary including questions about the proposed form, content, and posting requirements. Commenters supported requiring the equities exchanges to publicly post the Exchange Transaction Fee Summary as well as the proposed fields included in the summaries.[364]

Among those questions included in the Proposing Release, the Commission specifically asked commenters to suggest types of information that should be captured on the Exchange Transaction Fee Summary that would be useful to make comparisons across exchanges, and a few commenters offered specific suggestions.[365] Specifically, two commenters requested that the Exchange Transaction Fee Summary include the number of pricing tiers used by the exchanges, the number of firms that were in each tier, and information on transaction costs in each tier.[366] Similarly, another commenter suggested that the Exchange Transaction Fee Summary provide context on the Base and Top Tier fees by including the number of member firms, by participant type, that qualified for the Base and Top Tier fees and rebates reported on the Exchange Transaction Fee Summary.[367]

While the Commission appreciates these suggestions, it believes that adding more granular details about specific pricing tiers, which can vary greatly by exchange, would overcomplicate the fee summaries such that it would be difficult to standardize the information, thereby rendering the data less useful to researchers when comparing exchanges for purposes of the Pilot.[368] Further, with respect to the number of members qualifying for the Base and Top Tier fees and rebates, the Commission believes that the information that exchanges will report on average and median realized fees and rebates should be sufficient for purposes of analyzing the Pilot's results, including any changes in order routing. We believe that the disclosure of the number of members qualifying for the Base and Top Tier fees and rebates would also require other disclosures (including, *e.g.,* such member's trade volume at each tier) in order to provide context to the information. Providing all of these additional data points would increase the costs and complexity of the Pilot. The Commission however, does not believe that the incremental benefit of this information justifies additional costs and complexities. Accordingly, the Commission will not be requiring the exchanges to include additional information on their pricing tiers.

As part of its request for comment in the Proposal on what additional information would be helpful to include in the Exchange Transaction Fee Summary, the Commission specifically asked whether other measures beyond average and median fees should be selected.[369] In response, one commenter recommended that in addition to requiring the average and median per share fees and rebates, the Commission also require the ''mode'' per share fee and rebate (*i.e.,* the most frequently paid fee and rebate by each exchange's members), because the commenter believed it would ''enable a more accurate comparison of the fees and rebates most often applied by each exchange.'' [370] The Commission appreciates this suggestion, but continues to believe that for purposes of this Pilot, the proposed information on mean and median realized fees and rebates will be sufficient for purposes of analyzing the results of the Pilot, including any changes in order routing.

Lastly, a few commenters requested that the Exchange Transaction Fee Summary information be hosted at a central location rather than posted on the exchanges' individual websites.[371] While the Commission recognizes that it could be more convenient if the information were made available in one central location, because the data must be made available unencumbered and in a standardized XML schema format, the Commission believes that any person would readily be able to obtain and combine the summaries posted by each equities exchange with minimal effort.

[359] The Commission is also modifying the name of the field specified in proposed Rule 610T(b)(2)(ii)(E). The Commission proposed the field be named ''Test Group.'' As adopted, the field will be named ''Pilot Group'' to provide additional clarity.

[360] *See* Proposing Release, *supra* note 2, 13019, 13051.

[361] The Commission notes that the proposed language in Rule 610T(e) has been modified slightly. As proposed, Rule 610T(e) contained the phrase ''each national securities exchange that trades NMS stocks. . . .'' As adopted, the clause ''that facilitates trading in NMS stocks'' is being substituted for the phrase ''that trades NMS stocks'' to clarify that exchanges facilitate trading by their members in NMS stocks. In addition, the Commission notes that, as proposed, Rule 610T(e) contained a parenthetical which explained that data requirements set forth in subsection (e) were ''applicable to securities having a price greater than $1.'' As adopted, that parenthetical has been modified slightly to clarify that the requirements of subsection (e) apply to ''securities having a price equal to or greater than $1.''

[362] *See* Proposed Rule 610T(e). *See also* Proposing Release, *supra* note 2, at 13029–30.

[363] *See* Proposing Release, *supra* note 2, at 13030. *See also* Rule 610T(e).

[364] *See, e.g.,* SIFMA Letter, at 6; Better Markets Letter, at 7; Spatt Letter, at 4–5; and IEX Letter I, at 9.

[365] *See* Proposing Release, *supra* note 2, at 13031.

[366] *See* CFA Letter, at 5; Healthy Markets Letter I, at 22.

[367] *See* IEX Letter I, at 9.

[368] *See* Proposing Release, *supra* note 2, at 13030.

[369] *See* Proposing Release, *supra* note 2, at 13031.

[370] *See* RBC Letter I, at 5.

[371] *See* Better Markets Letter, at 7; CFA Letter, at 5; Healthy Markets Letter I, at 23.

Because of this, the Commission is not adopting a requirement on exchanges to consolidate this material and make it available in a central location.

3. Order Routing Data

To facilitate an examination of the impact of the Pilot on order routing behavior, execution quality, and market quality, the Commission proposed to require throughout the Pilot (including during the pre-Pilot Period and the post-Pilot Period) that each equities exchange prepare and publicly post a monthly downloadable file containing sets of anonymized order routing data in accordance with the specifications proposed in Rule 610T(d).[372] Specifically, Rule 610T(d) would require exchanges to provide the order routing information in two datasets—one for liquidity-providing orders and one for liquidity-taking orders, both aggregated by day, security, and broker-dealer.[373] The Commission further proposed that equities exchanges would be required to anonymize the identity of individual broker-dealers before making the order routing datasets publicly available, using an anonymization key provided by the Commission.[374]

A number of commenters supported the proposed requirements regarding the order routing datasets, expressing the belief that these requirements would provide researchers with useful data that would facilitate an analysis of the impact of transaction fees and rebates on order routing, execution quality, and market quality.[375] Several commenters believed the data would enable the Commission to make data-driven decisions on potential future equity market structure policy initiatives.[376] Others specifically supported the website posting requirement to make the data freely and publicly available.[377]

In addition, other comments addressed matters such as: Separating held and not-held orders in the datasets, separating principal from agency orders in the datasets, and not collecting ''parent order'' routing information.[378] Other commenters expressed concern that not collecting similar data from non-exchange venues would decrease the utility of the data and provide the Commission with an incomplete picture of the Pilot's impact.[379] Other commenters were critical of the proposed order routing data requirements because they believed, despite the anonymization and aggregation requirements, that publicly available data could be reverse engineered to reveal commercially-sensitive information about individual broker-dealers.[380] These concerns are discussed further, below.

a. Held and Not-Held Orders

The Commission proposed to require exchanges to separate out held and not-held orders in the order routing datasets and requested comment on whether orders should be separated out in that manner and whether there are certain shared characteristics of such orders that would be beneficial to assess when analyzing the Pilot data.[381] In response, several commenters stated that exchanges currently do not capture whether orders are held or not held.[382] Two commenters added that capturing that information would impose additional costs on market participants who would need to update their systems to include this information in the order messages they send to exchanges, as well as impose additional costs on exchanges to capture and report whether an order is held or not held.[383]

The Commission has considered these comments and has determined not to require the exchanges to separate held and not-held orders in the order routing datasets. In proposing to require capture of held and not-held orders, the Commission sought to include a data field that is readily available to and currently captured by exchanges and that would provide insight into the capacity in which a broker-dealer is handling orders. In turn, that information could be useful to assess the broker-dealer's routing of those orders. For example, orders that are ''held to the market'' may be routed differently than orders that are ''not held'' and for which the broker-dealer exercises more discretion in their execution. By separating out these orders, researchers would have access to an additional metric that potentially could be helpful in analyzing the Pilot data and parsing the results.

As commenters have indicated, however, broker-dealers do not transmit this information to exchanges and exchanges thus do not capture it. The Commission does not wish to impose new data collection requirements with respect to this Pilot data field, and therefore is not adopting this element. However, as detailed below, the Commission is adopting a new requirement for exchanges to instead separate out orders based on their order capacity (*e.g.,* principal, riskless principal, and agency), which information currently is transmitted to exchanges by broker-dealers.[384]

b. Principal Order Flow and Order Capacity

In response to the Commission's question in the Proposing Release about what data are necessary to facilitate an analysis of the potential conflicts of interest associated with transaction fees and rebates,[385] several commenters requested that the order routing datasets exclude orders marked as principal or riskless principal because the potential conflicts of interest posed by exchange transaction fees and rebates pose a potential harm primarily when broker-dealers are routing orders for customers in an agency capacity and may be unduly influenced by exchange fees and rebates to the detriment of obtaining the best execution for the customer's order.[386] To the extent a broker-dealer is routing its own proprietary order and is unduly influenced by exchange fees and rebates, then, at worst, it would only be harming itself. In other words, as noted by one commenter, ''a broker may route principal orders to maximize rebates and minimize access fees which would not be considered a conflict of interest.''[387]

Without separating out orders by their order capacity, one commenter argued that the order routing datasets could generate ''misleading results'' because the trades of various market participants could be aggregated at the same broker

[372] *See* Proposing Release, *supra* note 2, at 13031.

[373] Proposed Rule 610T(d)(1)–(2). The Commission notes that the proposed language in Rule 610T(d) has been modified slightly. As proposed, Rule 610T(d) contained the phrase ''each national securities exchange that trades NMS stocks. . . .'' As adopted, the clause ''that facilitates trading in NMS stocks'' is being substituted for the phrase ''that trades NMS stocks'' to clarify that exchanges facilitate trading by their members in NMS stocks.

[374] *See* Proposing Release, *supra* note 2, at 13032.

[375] *See, e.g.,* Barnard Letter, at 1; CII Letter, at 2–3; Better Markets Letter, at 7; Invesco Letter, at 1–2; Wellington Letter, at 1; CFA Letter, at 5; Clearpool Letter, at 6; ICI Letter I, at 5; RBC Letter I, at 5; Joint Pension Plan Letter, at 2; Oppenheimer Letter, at 2; IEX Letter I, at 10; Capital Group Letter, at 4; Healthy Markets Letter I, at 24; Angel Letter, at 1; Verret Letter I, at 1, 7; Spatt Letter, at 3.

[376] *See, e.g.,* Clark-Joseph Letter, at 1; Nuveen Letter, at 2; NYSTRS Letter, at 1; RBC Letter I, at 2; Invesco Letter, at 2; CFA Letter, at 1; State Street Letter, at 2; AJO Letter, at 1; Vanguard Letter, at 2.

[377] *See, e.g.,* AJO Letter, at 3–4; ICI Letter I, at 5; CFA Letter, at 5.

[378] *See infra* notes 382, 386, and 395–397.

[379] *See supra* notes 41–46.

[380] *See infra* note 404.

[381] *See* Proposing Release, *supra* note 2, at 13031, 13033.

[382] *See* FIA Letter, at 3 fn. 8; FIF Letter, at 6; Citadel Letter, at 3 fn. 5; IEX Letter I, at 10.

[383] *See* FIA Letter, at 3 fn. 8; IEX Letter I, at 10.

[384] *See, e.g.,* FIX Tag 528 (Order Capacity) under FIX 4.4 and Fix Tag 47 (Rule80A) under TIF 4.2, *available at http://btobits.com/fixopaedia/index.html.*

[385] *See* Proposing Release, *supra* note 2, at 13033.

[386] *See* FIA Letter, at 3; SIFMA Letter, at 8; Citadel Letter, at 3; Citi Letter, at 5–6.

[387] SIFMA Letter, at 8. *See also* Cboe Letter I, at 3 fn. 8.

due to ''direct market access arrangements,'' and these orders would be indistinguishable from customer orders routed by that broker.[388] In this way, agency orders (which are subject to conflicts of interest concerns that are relevant to the Pilot) could be mixed in with principal orders (which are not subject to conflicts of interest concerns that are relevant to the Pilot) and the inability to distinguish them could cloud the results. Accordingly, one commenter recommended separating principal and agency orders in the order routing datasets, while continuing to include both types of order flow.[389] The commenter believed that specifically identifying the extent to which orders are principal orders or agency orders ''would further facilitate the analysis of order flow and a better understanding of the efficacy of the [P]ilot.'' [390]

After careful consideration of these comments, the Commission has determined to require exchanges to separate out orders by order capacity (*e.g.,* principal, riskless principal, and agency). Requiring exchanges to separately aggregate orders according to their order capacity will allow researchers to more precisely parse the data as recommended by several commenters, particularly when analyzing the potential conflicts of interest in broker-dealer routing presented by exchange fee-and-rebate pricing models. For example, researchers will be able to separate out and exclude principal orders when studying conflicts of interest, as conflicts of interest do not present the potential for harmful impact with respect to such orders as they do for agency orders where the broker-dealer is routing for others. In addition, researchers will be able to include orders of any order capacity when studying other questions, such as intermediation, queue length, and time to execution, as such issues are relevant to orders of any capacity.

Further, the Commission believes that principal orders should be included in the order routing datasets, as the Pilot is designed to assess more than just conflicts of interest between brokers and their customers in order routing. It also is designed to observe the impact of exogenous shocks to transaction fees and rebates on execution quality and market quality broadly. Accordingly, the Pilot will provide the opportunity to obtain useful data on matters such as intermediation, queue length, and time to execution; the impact of fees and rebates on liquidity adding and liquidity removing activity; the relationship between payment of rebates on making activity (or taking activity on an inverted exchange) and fee levels for taking activity (or making activity on an inverted exchange); and the impact of fees and rebates on order routing behavior generally. Consideration of these issues directly implicates principal order flow and, as such, the Commission believes it is critical for the aggregated volume statistics included in the order routing datasets to include principal orders.

c. Order Designation

In response to questions in the Proposing Release on specific measures and data that would facilitate an analysis of the effects that changes to transaction fees and rebates have on order routing behavior, execution quality, and market quality, several commenters recommended that the Commission analyze the impacts of fees and rebates on various aspects of the execution quality of investors' limit orders.[391] Further, on the impact that prohibiting rebates may have on quoted spreads and displayed liquidity, commenters also disagreed about the willingness and ability for investors, other than those that are motivated by rebate capture, to post liquidity in order to capture the quoted spread.[392] In addition, in attempting to utilize transaction data to analyze the impact of reduced or eliminated rebates, one commenter recommended that the dataset exclude orders that presently are not eligible for rebates, such as those designated for participation in opening and closing auctions.[393]

While analyzing the impact of reduced or eliminated rebates is one potential analysis for which the Pilot's data may be useful, the Pilot's purpose is broader in scope. As such, the Commission continues to believe that it is appropriate for the order routing datasets to capture all liquidity-providing and liquidity-taking orders. However, in response to the commenters' recommendations discussed above and in an effort to ensure that the order routing data be as useful as possible and facilitate an analysis of the impacts of the Pilot, the Commission has determined to further refine the order routing dataset by requiring exchanges to report separately the volume statistics by ''order designation,'' which will require exchanges to separate out post-only orders as well as auction orders.

Separating the volume statistics in this manner will allow isolation of the cumulative number of post-only orders, which are limit orders that include instructions to never remove liquidity, and may be more reflective of a rebate-sensitive market participant. With the data further refined in this manner, the Commission believes the data will be more useful in analyzing the impacts of the Pilot both in comparing the pre-Pilot data to the Pilot data and in comparing the data across the Test Groups and Control Group during the Pilot. In particular, the further refinement will facilitate assessment of the impact of the Pilot on the willingness of investors to passively post orders and their ability to obtain queue priority (*i.e.,* represent the best price in the exchange's limit order book) and capture the quoted spread when doing so (*i.e.,* buy on the bid and sell on the offer).[394]

Furthermore, with respect to auction orders, which are orders specifically designated for execution in either an opening or closing auction, instead of separating out auction orders, exchanges may instead elect to simply exclude them from the order routing datasets, as an alternative means of complying with the order designation requirement. The Commission has determined to allow the exchanges to choose between these two approaches so that they may choose the option that is the least burdensome. If exchanges choose to include auction order data in the order routing datasets, they will need to comply with the requirement by separating orders by order designation, so that these orders may be separately identified and accounted for in any analyses of the Pilot's data.

The ability to isolate auction orders recognizes the uniqueness of the auction process and will facilitate separation of that data in order to study the Pilot's impact on trading during the regular market session without potentially biasing the results by including auction activity, for which different trading rules, order types, and fees apply.

[388] *See* FIA Letter, at 3 fn. 9.

[389] *See* Clearpool Letter, at 6.

[390] *Id.*

[391] *See, e.g.,* Fidelity Letter, at 8; ICI Letter I, at 5; SIFMA Letter, at 5–6; IEX Letter I, at 2. *See also* Proposing Release, *supra* note 2, at 13033.

[392] *See supra* notes 224–225 and accompanying text.

[393] *See* Mulson Letter I.

[394] *See supra* Section II.C.10.

d. Broker Routing Data

Several commenters addressed the utility of obtaining order routing data from broker-dealers that route customer orders in assessing the potential conflicts of interest related to transaction fees and rebates.[395] Several of these commenters explained that obtaining data from broker-dealers (in addition to or in place of obtaining such data from exchanges) would facilitate an analysis of the impact of transaction fees and rebates on order routing behavior and potential conflicts of interest from the perspective of customers, as the brokers would have information that can be used to assess the execution quality of a ''parent order'' and would provide information on the broader universe of potential routing destinations, including non-exchange trading venues.[396] One commenter added that investors needed to conduct their own analyses of their orders to understand the impact of the Pilot on their brokers.[397]

The Commission is not requiring data collection from broker-dealers or non-exchange trading venues. The order routing datasets will include aggregated data from exchanges (as opposed to individual order level data from broker-dealers) representing the sum totals of the ''child'' orders that are processed by an exchange. While the Pilot will not capture the entire lifecycle of a ''parent'' order from its inception, the Commission believes that its approach will minimize the implementation costs on market participants while ensuring that the Commission and researchers have useful data on child orders to observe the impacts of introducing exogenous shocks to exchange transaction fees and rebates. The order routing data provided by the exchanges represents the information that would be directly correlated to these exogenous shocks. Data that is available elsewhere [398] will provide the ability to understand any observed changes in order flows or market share to non-exchange venues during the Pilot.

Further, the Commission agrees with the commenters that noted that market participants need to conduct their own analyses of their own order flow. If market participants conduct their own analyses, including parent order-level analyses, and wish to provide that information to the Commission and the public, the Commission would be able to consider the information in assessing the Pilot's ultimate impact on order routing behavior, execution quality, and market quality. The Commission encourages market participants to conduct analyses and make the results of their analyses public. The Commission also encourages any interested party that prepares an analysis of the Pilot to submit it to the Commission for posting on the Commission's website.[399]

e. Directed Orders

Two commenters recommended that the order routing datasets identify whether orders are directed or non-directed.[400] One of these commenters believed that directed orders do not feature ''the same level of discretion and conflicts of interest that are the primary focus of the'' Pilot.[401] After careful consideration of these comments the Commission has determined not to require the order routing datasets to identify directed orders. The Commission recognizes that researchers may be interested in isolating orders directed by customers to specific exchanges because these orders may not be subject to the same potential conflicts of interest that may be present when a broker chooses where to route a customer order. However, separating out directed orders in the datasets (which report *aggregated* data and not order-by-order data) would require exchanges and broker-dealers to incur additional costs in preparing the Pilot's order routing data. Further, the Pilot is designed to assess more than just conflicts of interest between brokers and their customers in order routing, and separate identification of directed and non-directed orders is not germane to the other questions the Pilot is designed to explore. Accordingly, the Commission believes that the additional implementation costs that adding such a requirement would impose are not justified by any benefits that may accrue from identifying, on an aggregated basis, directed orders in the order routing data.

f. Utilizing the Consolidated Audit Trail

Two commenters recommended that, instead of requiring separate order routing datasets, the Commission instead use data that the equities exchanges will report to the Consolidated Audit Trail (''CAT'').[402] In the Proposing Release, the Commission stated that if the equities exchanges are reporting to the CAT at the time the Pilot commences, they would be able to compile the order routing datasets by utilizing the data they collect pursuant to the CAT national market system plan.[403] However, there have been delays in the development and building of the CAT, and the reporting required by the first phase of the CAT NMS Plan has been delayed. Although the exchanges and FINRA have recently begun to report certain data to the CAT central repository, they continue to work to fully implement the first phase of the CAT NMS Plan, including linkages between reported events and regulators' query functionality. The Commission believes that it is important to proceed with the Pilot and not delay the Pilot until the exchanges have begun full reporting to the CAT and the CAT operates in a manner that would facilitate the data analysis contemplated by the Pilot.

g. Anonymization and Public Availability

Several commenters expressed concerns about having the exchanges publicly post the order routing datasets, despite the requirement that the exchanges anonymize the identities of broker-dealers before making the datasets publicly available. These commenters believed that the order routing data could potentially be ''reversed engineered'' such that market participants might be able to ascertain the identities of individual broker-dealers in some circumstances.[404] In contrast, one commenter acknowledged that ensuring confidentiality is ''critical'' and was ''pleased to see that the SEC has recognized this in proposing anonymizing certain of the proposed data to protect confidential information.'' [405]

Of the commenters concerned about the potential for reverse engineering, one of these commenters provided an example of how the information could

[395] *See, e.g.,* Healthy Markets Letter I, at 24–25; Pragma Letter, at 3; NYSE Letter I, at 9–10; NYSE Letter II, at 12–13; Viable Mkts Letter, at 2; Babelfish Letter, at 3.

[396] *See e.g.,* Healthy Markets Letter I, at 24–25; Pragma Letter, at 3; NYSE Letter I, at 9–10; NYSE Letter II, at 12; Viable Mkts Letter, at 2.

[397] *See* Babelfish Letter, at 3.

[398] *See* FINRA OTC Transparency Data, *available at https://otctransparency.finra.org/.*

[399] *See supra* note 302 and accompanying text.

[400] *See* Healthy Markets Letter I, at 23–24; Clearpool Letter, at 6.

[401] Healthy Markets Letter I, at 23.

[402] *See* Citadel Letter, at 3; TD Ameritrade Letter, at 6. In response to the Commission's solicitation of comment in the Proposing Release on whether the CAT repository, if it were operational, would provide sufficient data to evaluate the Pilot, one commenter stated that it believed the data reported from the CAT would provide the necessary information with respect to order routing data. *See* FIF Letter, at 2.

[403] *See* Proposing Release, *supra* note 2, at 13031 n. 172 and accompanying text.

[404] *See, e.g.,* FIA Letter, at 3; Virtu Letter, at 7–8; SIFMA Letter, at 6; FIF Letter, at 2; Citadel Letter, at 4; Citi Letter, at 6; TD Ameritrade Letter, at 5; STANY Letter, at 5; IEX Letter I, at 10; Credit Suisse Commentary, at 6; Morgan Stanley Letter, at 4.

[405] *See* Clearpool Letter, at 6–7.

be reverse engineered if ''a market participant could direct a large order in a particular symbol to a specific broker-dealer, and then identify the presence of that order'' in the order routing datasets.[406] This commenter added that market participants may also be able to compare the order routing datasets with reports published pursuant to 17 CFR 242.605 (Rule 605 of Regulation NMS) to determine the identity of broker-dealers.[407] Once a broker-dealer's identity is likely known, this commenter believed that competitors could use the order routing datasets to discern that broker's ''(a) market share and activity in a given security, (b) overall routing practices, and (c) relative aggressiveness or passiveness in specific securities.'' [408] This commenter also believed that strategies used by institutional investors that are customers of broker-dealers ''may also be susceptible to reverse-engineering.'' [409] Another commenter added that it believed ''market participants and others will be able to identify certain broker-dealers routing strategies by comparing the Pilot data to publicly available 17 CFR 242.606 (Rule 606) disclosures, or by other means,'' although it did not specify those other means.[410]

Several of the commenters that expressed concern about the public availability of the order routing data, despite the proposed anonymization requirements, recommended approaches to address their concerns. Some of these commenters stated that the Commission should receive order routing data at the broker-dealer level, but that the public should only have access to data that is further aggregated, such that the data would include statistics for firms of similar types or business models, or simply aggregate all orders received by the exchange.[411] However, in contrast, two commenters noted that the order routing data aggregated by broker would be important to analyses undertaken by researchers and therefore should be made more broadly available.[412] Two other commenters suggested that if the order routing data aggregated by broker would be helpful for researchers, the Commission should provide that data to researchers only if they sign a non-disclosure agreement.[413] In addition, three commenters recommended that if order routing datasets are to be made publicly available on exchange websites, they should be subject to a 120 day delay instead of a 30 day delay.[414]

The Commission appreciates commenters' concerns about the need to safeguard the confidentiality of the order routing datasets. The Commission agrees that if market participants were able to identify specific broker-dealers in the datasets, there is the potential that the data could be reverse engineered to reveal proprietary information about trading attributable to specific broker-dealers. The Commission has revised its approach to eliminate the public availability of the order routing datasets to help address these concerns, while still furthering the goals of the Pilot. More specifically, to address commenters' concerns with the public availability of the data and the exchanges' role in preparing it for dissemination, the Commission is not adopting the requirement for the exchanges to anonymize [415] and publicly post the order routing data.

The Commission, however, believes it is important for the Commission itself to have access to the order routing dataset, so the Commission can consider the effects of rebates and transaction-based fees on order routing behavior, execution quality, and market quality. Accordingly, given the potential for reverse engineering, the Exchanges will be required to provide order routing data directly to the Commission.

While the Commission anticipated benefits from market participants, researchers, and others in conducting independent analysis of the Pilot and its impacts, the Commission has carefully balanced the concerns about possible reverse engineering of the order routing data against these benefits. The Commission believes that it can assess the effects of the transaction-fee and rebate models on order routing behavior and thereby achieve this goal of the Pilot without requiring public disclosure of order routing data attributable to a specific broker-dealer.

The Commission is not adopting the requirement for exchanges to make public in an anonymized form the order routing data, but the exchanges will instead identify individual broker-dealers by MPID or CRD number in the order routing data they send to the Commission. The Commission recognizes that order routing data attributable to a specific broker-dealer is particularly sensitive and is non-public information.[416] The Commission, however, intends to make public analyses, results, and studies using the order routing data. In determining whether and how to make public this or any other information, the Commission will be sensitive to the concerns articulated by commenters and will consider steps such as aggregating or anonymizing order routing data.

Specifically, the Commission is adopting a requirement for each exchange to prepare and transmit directly to the Commission, in pipe-delimited ASCII format, no later than the last day of each month, a file containing sets of order routing data.[417] While the Commission is not requiring the exchanges to anonymize the data and thus will no longer provide exchanges with the Broker-Dealer Anonymization Key, the Commission is requiring each exchange to provide its order routing data by broker-dealers' CRD number and MPIDs in order to provide aggregated broker-dealer level data to the Commission to facilitate its analysis of the data.[418]

The Commission believes that the suggested alternative to further aggregate the datasets, for example, to combine the data of several firms together or combine all firms together, would seriously compromise the ability of researchers to investigate the potential conflicts of interest in routing because researchers would not be able to see an individual broker-dealer's orders across all exchanges and thereby would not be able to assess how any particular broker-dealer may have been influenced by fees and rebates at

[406] Citadel Letter, at 4.

[407] *See id.*

[408] *Id.*

[409] *Id.*

[410] *See* TD Ameritrade Letter, at 5.

[411] *See, e.g.,* Citadel Letter, at 4; Credit Suisse Commentary, at 6; IEX Letter I, at 10; Morgan Stanley Letter, at 4; STANY Letter, at 5; SIFMA Letter, at 6–7; TD Ameritrade Letter, at 5; FIF Letter, at 7.

[412] *See* Lipson Letter, at 1; Spatt Letter, at 3.

[413] *See* Citadel Letter, at 5; Citi Letter, at 6.

[414] *See* SIFMA Letter, at 7; STANY Letter, at 5; Fidelity Letter, at 11.

[415] Several commenters expressed concerns that the equities exchanges would have access to the Broker Dealer Anonymization Key. *See, e.g.,* Virtu Letter, at 8; SIFMA Letter, at 7; FIF Letter, at 2; STANY Letter, at 5; IEX Letter I, at 10; Morgan Stanley Letter, at 4. As adopted, the exchanges would not have access to the Broker Dealer Anonymization Key, which addresses the commenters' concerns.

[416] The Commission will deem broker-dealer identifying order routing data as being subject to a confidential treatment request under 17 CFR 200.83 without the need to submit a request. The Freedom of Information Act provides at least two potentially pertinent exemptions under which the Commission has authority to withhold certain information. *See* 5 U.S.C. 552(b)(4) and (8).

[417] *See* Proposing Release, *supra* note 2, at 13033 (asking whether commenters think exchanges should be required to report the datasets directly to the Commission). Further, in its Proposal, the Commission noted that it considers the order routing data to be ''regulatory'' information and proposed to prohibit exchanges from accessing or using the information for commercial purposes. *See id.* at 13032. The Commission is adopting as proposed the prohibition on exchange personnel accessing the data for commercial purposes, as exchanges will have access to the information.

[418] *See id.* at 13032. *See also* Rule 610T(d)(1)(iv) and (d)(2)(iv).

different exchanges.[419] Because broker-dealer level data already is consolidated (*i.e.,* the data would not separate out individual customer activity), adding another level of consolidation by grouping broker-dealers together would cloud insight into the potential conflicts of interest question, rendering the data potentially useless for the purpose of studying conflicts of interest. Accordingly, the Commission continues to believe that it needs access to the order routing data in its proposed form, without further aggregation of the data.[420]

F. Implementation

The Commission proposed to publish a notice setting forth the start and end dates of the pre-Pilot, Pilot, and post-Pilot Periods.[421] If applicable, the Commission also would publish a notice if it determines to suspend the one-year sunset of the Pilot Period.[422] As discussed in the Proposing Release, the start date of the pre-Pilot Period would be one month from the date the Commission issues the notice, and the end date of the pre-Pilot Period would be six months from the pre-Pilot Period's start date. Thus, the Pilot, which is to start at the conclusion of the pre-Pilot Period, would begin seven months from the date the Commission issues the notice. The post-Pilot Period would commence at the conclusion of the Pilot and would end six months from the post-Pilot Period's start date. The Commission proposed to publish the initial notice setting forth the start date for each of the Pilot's three periods, and do so with a one-month minimum advance notice in order to allow the equities exchanges to finalize their preparations for the Pilot's pre-Pilot Period, as well as provide at least a seven-month advance notice to market participants of the start date on which the Pilot's conditions would go into effect.[423]

One commenter agreed that a one-month period between the Commission's notice and the start of the pre-Pilot Period would be ''sufficient provid[ed] there are no changes to the Pilot securities lists and assigned test/control groups.'' [424] This commenter also agreed that the proposed seven-month period following the Commission's notice would be ''sufficient to prepare for the Pilot.'' [425] However, this commenter requested that ''any technical specification materials required to support implementation of the Pilot be reviewed with the industry and finalized in an expeditious manner, six months prior to the launch of the pre-Pilot data gathering phase,'' which the commenter believed would ''allow[ ] necessary time for industry firms to properly scope necessary development work and assign respective resources.'' [426] Another commenter, however, did not believe that a one month period prior to the start of the pre-Pilot period would be sufficient for the industry to prepare and instead estimated that ''the implementation of the pre-Pilot processing alone [would] take between three to four months.'' [427] As discussed and addressed above, a few commenters recommended that the Pilot begin with a limited phase-in period with a small number of securities.[428]

After careful consideration of the comments received, the Commission continues to believe that the proposed implementation approach should provide adequate notice and time for those impacted by the Pilot to prepare for its requirements. The Pilot will begin with a six-month pre-Pilot period during which exchanges will not need to revise their fees to comply with the Pilot. At the conclusion of the pre-Pilot Period, exchanges will be required to revise any of their fees, which will apply to the Pilot Securities, that currently exceed the terms of the Pilot's Test Groups. While the Exchange Act allows exchanges to file their fees for immediate effectiveness, exchanges may choose to preview their Pilot-related fee changes to their membership to provide them with additional time to adjust their order routing systems in response to those changes.[429] The Commission does not anticipate that technical specification materials will be required to support implementation of the Pilot by broker-dealers because the Pilot solely concerns exchange fees which exchanges commonly adjust with little or no advance notice though immediately effective fee filings with the Commission. Therefore, broker-dealers currently are accustomed to accommodating the types of fee changes that would be required to comply with the requirements of the Pilot.

Further, the Commission believes that publishing the start date for each of the Pilot's three periods in advance, with at least one month's advance notice, will provide the exchanges with time to prepare the three types of data required by the Pilot. First, because the Commission will determine the initial List of Pilot Securities, the exchanges will only need to perform the ministerial task of separating out their listed issuers and creating the Pilot Securities Exchange Lists and Pilot Securities Change Lists. Second, the Exchange Transaction Fee Summaries will require each exchange to summarize its own fees, for which it is solely responsible, in the specified XML format. For the initial Exchange Transaction Fee Summary, which would be posted prior to the start of trading on the first day of the pre-Pilot Period, exchanges would not need to include information that is calculated on a look-back basis, because the look-back period for that report would pre-date the pre-Pilot Period. Accordingly, preparation of the initial Exchange Transaction Fee Summary report should be streamlined.[430] Finally, the order routing datasets, because they also are prepared on a look-back basis, will not need to be prepared until the end of the second month of the pre-Pilot Period (as it will contain data for the first month of the pre-Pilot period).[431] Accordingly, the Commission continues to believe that the proposed time frames set forth in Rule 610T(c)(4) are sufficient to allow the equities exchanges and market participants to prepare for the requirements of the pre-Pilot Period, the Pilot Period, and the post-Pilot Period.

[419] *See, e.g.,* CFA Letter, at 5 (believing that ''breaking the data out at the broker-dea[le]r level will permit a closer examination of how different broker-dealers may change their order routing behavior in response to changes in fees and rebates at each exchange.''); Lipson Letter, at 1; Spatt Letter, at 3; Better Markets Letter, at 7; Healthy Markets Letter I, at 24 fn. 87.

[420] The Commission notes that the proposed language in Rule 610T(d)(1)(vi)(F), (d)(1)(xii)(H), and (d)(2)(vi)(F) has been modified slightly. As proposed, Rule 610T(d)(1)(vi)(F) and Rule 610T(d)(2)(vi)(F) both noted that the order size code at the largest share bucket was ''> 10,000.'' As adopted, the largest share bucket order size code will be reflected as ''≥ 10,000 share bucket.'' In addition, as proposed, Rule 610T(d)(1)(xii)(H) set forth a time frame of ''> 30 minutes of order receipt.'' As adopted, that time frame will be clarified to state that the time frame is ''≥30 minutes of order receipt.''

[421] *See* Proposing Release, *supra* note 2, at 13033.

[422] *See id.*

[423] *See id.* at 13033–34.

[424] *See* FIF Letter, at 7–8.

[425] *See id.* at 8.

[426] *See* FIF Letter, at 8.

[427] *See* Cboe Letter I, at 21.

[428] *See supra* notes 349–350 and accompanying text.

[429] Although broker-dealers will need to account for different fee and rebate levels across two Test Groups and the Control Group if exchanges maintain different fee and rebate levels across the treatment groups, they will have seven months before the start of the Pilot Period to update their execution algorithms, including to accommodate the prohibition on rebates and Linked Pricing in the no-rebate Test Group.

[430] The fields in the Exchange Transaction Fee Summary that are calculated based on a look-back period to the prior month are: Rule 610T(e)(9) (month and year of the average and median figures); (12) average take/make; and (13) median take/make.

[431] *See* Proposed Rule 610T(d).

No comments were received regarding the required notice to suspend the automatic sunset provision. Accordingly, the Commission adopts this aspect of the Pilot for the reasons outlined in the Proposing Release.

G. The Commission's Authority To Conduct the Pilot

The Commission is adopting the Pilot in furtherance of its statutory responsibilities. In 1975, Congress directed the Commission, through enactment of Section 11A of the Exchange Act, to use its authority under the Exchange Act to facilitate the establishment of a national market system to link together the multiple individual markets that trade securities. Congress intended the Commission to take advantage of opportunities created by new data processing and communications technologies to preserve and strengthen the securities markets. Congress also directed the Commission to exercise this authority ''to carry out'' certain ''objectives,'' which include assuring: ''economically efficient execution of securities transactions''; ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''; the ''availability . . . of information with respect to quotations for and transactions in securities''; and '' an opportunity . . . for investors' orders to be executed without the participation of a dealer.'' [432] In addition, the Exchange Act elsewhere requires that the rules of national securities exchanges (i) ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,'' (ii) not be designed to ''permit unfair discrimination between customers, issuers, brokers, or dealers,'' and (iii) not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [433]

Through these provisions Congress conferred on the Commission ''broad authority to oversee the SROs' '. . . operation . . .' of the national market system.'' [434] And it is pursuant to this authority that the Commission originally adopted Rule 610(c). The Pilot reflects the Commission's efforts to evaluate, in light of changing market conditions, whether the existing transaction-based fee and rebate structure continues to further the statutory goals. In that sense, the Pilot follows as an appropriate progression from Rule 610, and it represents an important step in the Commission's continuing obligation to implement Congress's objectives for the national market system.

The Commission disagrees with the suggestion by one commenter that the Pilot is inconsistent with Exchange Act Section 19(b)(3)(A), which sets out part of the process by which proposed rule changes by self-regulatory organizations may become effective.[435] Contrary to the commenter's suggestion, nothing in Section 19 interferes with the Commission's authority described elsewhere in the Exchange Act. Indeed, Section 19 itself makes clear that the Commission retains ultimate authority over the rules of registered exchanges, providing that ''[n]o proposed rule change [by a self-regulatory organization] shall take effect unless approved by the Commission or otherwise permitted in accordance with [Section 19(b)]'' [436] and making clear that the Commission retains authority to suspend and institute proceedings to approve or disapprove even those exchange rules that are permitted to take effect upon filing with the Commission.[437] Moreover, Section 19 explicitly permits the Commission to summarily implement or suspend any such proposed rule changes if, in the Commission's view, doing so would serve the public interest, protect investors, or assist in maintaining fair and orderly markets.[438] And it makes clear that the Commission retains authority to amend exchanges' rules on its own initiative.[439]

Commenters also disagreed about whether the Pilot complied with the Commission's statutory obligations under the Administrative Procedure Act [440] (''APA'') and whether the Pilot is consistent with the Exchange Act.[441] For example, working from the premise that the APA requires the Commission to '' 'examine[ ] the relevant data and articulate[ ] a satisfactory explanation for its action including a rational connection between the facts found and the choices made,' '' [442] one commenter believed that the Commission ''lacks the administrative record,'' ''evidence'' and ''analysis'' that would be ''needed to justify such drastic government intrusion into free markets.'' [443] Another commenter, however, disputed that notion and observed that the Commission had developed the Pilot, in part, by relying on ''empirical literature'' that ''is directly on point and speaks to the potential distortionary effects that the pilot program is designed to study'' and that ''certainly provides strong empirical support for further analysis by way of data generated through a pilot study.'' [444] The responding commenter also found it significant that the Commission was ''presently in the midst of a formal notice and comment process . . . which was informed by years of discussion at, and a proposal from, the [EMSAC]'' and that the Commission ''had chosen to act via a pilot program rather than a proposal for a long-term rule.'' [445] The commenter therefore believed the

[432] 15 U.S.C. 78k–1(a)(1)(C), (a)(2); *see also id.* sec. 78k–1(c)(1) (stating that self-regulatory organizations shall not make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe to ''assure the . . . fairness and usefulness of the form and content of such information'').

[433] 15 U.S.C. 78f(b)(4), (b)(5), (b)(8). The Commission also has authority to adopt the Pilot pursuant to Exchange Act Sections 17(a) [15 U.S.C. 78q(a)] (requiring each exchange to make and keep'' for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, ''prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Act]''), and 23(a) [15 U.S.C. 78w(a)] (granting the Commission the power to make such rules and regulations as may be ''necessary or appropriate to implement the provisions of this chapter'' for which the Commission is responsible or for the execution of the functions vested in the Commission by the Act).

[434] City of Providence, Rhode Island v. BATS Global Mkts., Inc., 878 F.3d 36, 41 (2d Cir. 2017).

[435] *See* Cboe Letter I, at 10–11. *See* 15 U.S.C. 78s(b)(3)(A).

[436] 15 U.S.C. 78s(b)(1).

[437] *Id.* Sec. 78s(b)(3).

[438] *Id.* Sec. 78s(b)(3)(B), (C).

[439] *Id.* Sec. 78s(c).

[440] 5 U.S.C. 500, *et seq.*

[441] A few commenters suggested that the Pilot ''would not withstand judicial scrutiny'' because certain aspects of the Pilot were ''arbitrary and capricious and not in accordance with law.'' *See, e.g.,* Nasdaq Letter I, at 3. Specifically, these commenters challenged the sufficiency of the Commission's economic analysis, the exclusion of non-exchange trading centers from the Pilot, the inclusion of ETPs in the Pilot, the ability of the Pilot to provide the Commission with usable data, and the Commission's decision to pursue a Pilot instead of other market structure initiatives. *See, e.g.,* Nasdaq Letter I, at 1–4, 8–9, 11; Cboe Letter I, at 12; NYSE Letter, at 2–3, 7. These specific concerns are addressed in Section IV (discussing the Commission's economic analysis), Section II.A.4 (discussing the exclusion of non-exchange trading centers from the Pilot), Section II.B.3 (discussing the inclusion of ETPs in the Pilot), Section II.E (discussing the ability of the Pilot to provide the Commission with usable data), notes 307–319 *supra* (discussing the Commission's decision to pursue a Pilot in conjunction with other market structure initiatives).

[442] Nasdaq Letter I, at 11 (quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

[443] *Id.* at 11–12.

[444] Verret Letter I, at 5–6.

[445] *Id.* at 6.

Commission had fulfilled its statutory obligations in ''determin[ing] that, given existing evidence suggesting the distortive effect of practices in the market tied to rebates or access fees, a pilot program will provide sufficient information to inform potential future rulemaking.'' [446]

The Commission agrees and notes that it has carefully examined available data on this issue, engaged in a lengthy and deliberative process, and taken into account the recommendations of two independent advisory bodies (EMSAC and the Investor Advisory Committee). The Commission developed the Pilot through a thorough review of the empirical literature, which was cited and discussed in the Proposing Release, as well as submitted as comments in response to this proposal.[447] Moreover, as discussed in the Proposal, the EMSAC conducted a thorough process to consider, and ultimately formally recommend, that a pilot be conducted.[448] The EMSAC reflected a broad and diverse set of perspectives. In addition, EMSAC heard testimony from experts during its open meetings (which included as panelists senior executives from exchanges) regarding exchange fee models, the appropriateness of a transaction fee pilot, and the shape that such a pilot should take.[449] In addition to EMSAC, the independent Investor Advisory Committee also submitted a recommendation in support of the Pilot.[450]

After considering all of the available information, the Commission has identified a fundamental disagreement among exchanges, market participants, academics, and industry experts regarding the impact of such fees and rebates on the markets.[451] This disagreement is further exacerbated by the lack of data to evaluate these competing claims. The Commission believes that the Pilot is necessary to study the impact of exchange fees and rebates to determine whether a regulatory response is needed to mitigate the potential distortions that current exchange pricing models introduce to order routing behavior, market quality, and execution quality.

Some commenters argued that the Pilot's imposition of new fee caps constituted ''impermissible government rate-making.'' [452] For example, one exchange commenter stated that ''[g]overnment-imposed price controls'' ''reduce choices for market participants,'' ''distort competition between over-the-counter venues and exchanges,'' and are ''costly to administer and lacking in an incentive to be efficient,'' such that ''they are only indicated where they overcome severe market imperfection such as monopoly ownership of a critical resource.'' [453] As discussed above, another commenter asserted that the Exchange Act ''plainly contemplates that *exchanges,* rather than the SEC, will make an initial determination as to the price of a particular product or service,'' and indicating that ''fee setting is the province of each exchange, subject to the competitive forces that naturally control fees'' and ''subject to oversight only in particular situations.'' [454]

Commenters expanded on this argument by stating that the Commission had not sufficiently ''evaluate[d] whether there is any evidence that the Commission's objectives in adopting the cap on access fees . . . are not being met.'' [455] One commenter, for example, found it ''concerning that the fee caps in the proposed Pilot do absolutely nothing to further the justification of the original cap and, unlike the original access fee cap, are set at levels that completely undercut existing rates.'' [456] Exchange commenters further contended that the Pilot imposes ''completely new limitations on exchanges' business'' that were ''unrelated to Regulation NMS's Access Fee Cap,'' because the Pilot would ''expand[ ] the cap on fees that exchanges may charge for execution not only against a protected quote, but for execution against any quote on an exchange, including depth-of-book and non-displayed orders,'' as well as ''limit . . . the rebates that an exchange pays'' and ''pricing that is linked to providing or removing liquidity on an exchange.'' [457]

The Pilot has two Test Groups, one of which does not cap fees at all, but rather leaves in place the current Rule 610(c) fee cap and simply prohibits exchanges from *paying* rebates or offering Linked Pricing. The other Test Group does impose a lower fee cap for a small portion of NMS stocks (730 out of over 8,000 NMS stocks) for a limited period of time, but is doing so to study the effects of exchange fee-and-rebate pricing models and to gather data to assess the impact on the markets and market participants of a revised and lowered cap compared to the current cap. Further, the Commission selected an amount for that cap that was recommended by commenters, including the Investor Advisory Committee.

As explained above, the existing fee cap was designed, in part, to prevent trading centers from charging unreasonably high fees to market participants required to honor their quotations by the Order Protection Rule.[458] Because ''[a]ccess fees tend to be highest when markets use them to fund substantial rebates to liquidity providers, rather than merely to compensate for agency services,'' the Commission was concerned that ''the published quotations of [outlier]

[446] *Id.* at 5.

[447] *See, e.g.,* Swan Letter; IEX Letter I; NYSE Letter I.

[448] *See* Proposing Release, *supra* note 2, at 13009 n.6, 13012–14.

[449] *See id.* at 13009–14.

[450] *See* IAC Recommendation.

[451] *See, e.g.,* Section II.A.2. *supra* for a discussion of comments regarding the impact of current pricing models on market quality, execution quality, and order routing.

[452] Nasdaq Letter I, at 2. *See also* Cboe Letter I, at 1.

[453] Nasdaq Letter I, at 5, 11–12. *See also* Cboe Letter I, at 11; Mexco Letter, at 1. One commenter agreed that ''price controls on access fees indicate something is broken in market structure,'' but observed that ''there has been no serious economic analysis, let alone a cost-benefit analysis, of what the optimal fee cap (if any) should be'' and that the Pilot would ''provide solid evidence that can be used to determine the optimal fee cap.'' Angel Letter I, at 1–2; Angel Letter II, at 2.

[454] Cboe Letter I, at 10 (citing 15 U.S.C. 78s(b)(3)(A)(ii), which provides that ''a proposed rule change shall take effect upon filing with the Commission if designated by the self-regulatory organization as. . . establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization''). This commenter also noted that ''every single exchange transaction fee in place today was filed with, and processed by, the Commission'' and that any fees that were inconsistent with the Exchange Act ''could have been suspended or abrogated by the Commission if that were deemed necessary.'' *Id.* at 6.

[455] NYSE Letter I, at 11. This commenter identified the relevant ''objectives'' of Rule 610(c) as preventing the exchanges from ''undermining Regulation NMS's price protection and linkage requirements.'' *Id.* Another commenter similarly characterized the ''justification for the fee cap under Rule 610(c)'' as ''the existence of sustained market power created by the requirement of best execution and the prohibition against trading through,'' which would permit exchanges to ''charge high access fees thereby undermining Regulation NMS's price protection and linkage requirements.'' This commenter believed that the Commission had wrongfully assumed ''that the market power presumably wielded by equities exchanges is so great that they may charge excessive fees now and in the future'' unless ''artificial government price constraints'' are imposed. Nasdaq Letter I, at 12–13, 12 n.38. The third commenter stated that the ''original fee cap rationale'' was to ''address predatory outlier pricing.'' Cboe Letter I, at 14.

[456] Cboe Letter I, at 14.

[457] NYSE Letter I, at 12. *See also* Cboe Letter I, at 10 (stating that it was a ''conflict[ ] with the purposes of the Exchange Act and [a] depart[ure] from Commission precedent'' to ''cap fees for transactions that do not implicate intermarket price protection'' and ''ban[ ] linked pricing,'' which has been ''utilized by exchanges with SEC consent for years'').

[458] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37545 (June 29, 2005) (File No. S7–10–04).

markets would not reliably indicate the true price that is actually available to investors or that would be realized by liquidity providers.'' [459] The Commission explained that the fee cap helped assure the fairness and usefulness of quotation information; limit the extent to which the true price for those who access quotations can vary from the displayed price; permit broker-dealers to route orders in a manner consistent with the operation of a national market system; and protect limit orders and promote best-priced quotations.[460] Accordingly, the Commission imposed a $0.0030 fee cap, which it believed reflected a competitive rate that was consistent with current business practices at the time (*i.e.,* in 2005).[461]

In establishing the Rule 610(c) fee cap, the Commission did not, however, cede its responsibility to ensure that markets continue to function in a fair, transparent, and efficient manner; nor did it state that the $0.0030 fee cap could not be revisited if market conditions changed. The Pilot is designed to determine, among other things, whether such a change has occurred. Despite assertions by one commenter that ''powerful competitive forces are clearly present that discourage exchanges from exercising unabated pricing power,'' [462] a $0.0030 fee is still consistently charged by many exchanges, raising concerns among other commenters that the fee cap is stuck at a non-competitive and, perhaps, an artificially high rate.[463] Several commenters have also indicated that current pricing models have resulted in the kind of distortive pricing that Rule 610(c) was designed to prevent.[464] Testing lower fee levels, and a no-rebate fee regime,[465] will help the Commission to determine whether further regulatory action is needed to achieve the objectives of Rule 610(c) as well as the Commission's statutory mandate to oversee the equities markets.

The Commission's position is echoed by other commenters that found the ''suggest[ion] that the Commission lacks the authority to implement the Pilot, or that testing a rebate ban or alternative access fee caps would constitute an impermissible form of price control . . . meritless'' [466] or ''entirely inaccurate.'' [467] One commenter, for example, noted that the Exchange Act ''provides very broad authority for the Commission to regulate all aspects of exchange operation, including fee schedules . . . .'' [468] This commenter further observed that ''it makes no sense to attack the Commission's proposal as an impermissible form of 'rate setting' when the markets have been operating with exchange fee limits for more than 10 years.'' [469] Moreover, this commenter asserted that ''exchange criticisms'' regarding ''price control[s]'' are ''contradicted by their acceptance of th[e] existing price regulation'' in Rule 610(c), which ''may better serve their interests than the alternative caps and rebate prohibition included in the Pilot.'' [470]

A few other commenters believed that the Commission had not sufficiently identified or discussed the statutory authority to conduct the Pilot.[471] One commenter stated that the Proposing Release did not contain an ''explanation as to how those specific statutory sections [cited by the Commission], either individually or collectively, provide the Commission with the authority to carry out the Proposal's broad rate-setting requirements'' or a ''discussion of the Commission's statutory authority at all . . . .'' [472] This commenter asserted that the Commission ''cannot simply skip this analysis or assume it has unrestricted authority to conduct pilots on the basis that the Proposal is intended to be temporary.'' [473]

The Commission notes that it followed its standard practice in the Proposing Release to identify the statutory authority under which it promulgated its Proposal. The Commission has complied with its statutory obligations in promulgating the Pilot and has clear statutory authority to adopt the Pilot, which the Commission believes furthers the purposes of the Exchange Act.[474]

III. Paperwork Reduction Act

Certain provisions that the Commission is adopting today contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[475] The Commission published

[459] *Id.*

[460] *Id.*

[461] *Id.*

[462] Nasdaq Letter I, at 13.

[463] *See, e.g.,* BlackRock Letter, at 1 (''[T]he existing access fee cap is outdated and permits market forces to drive fees and rebates to excessive levels relative to the current magnitude of commissions and bid-ask spreads.''); Goldman Sachs Letter, at 2 (identifying a ''well-developed, general consensus amongst market participants that a $0.0030 per share Fee Cap is an outdated benchmark for execution costs in today's trading environment . . . and far from representative of true prices in the marketplace''); Citi Letter, at 1–2 (stating that ''today's 30-mil cap on access fees that the exchanges can charge to access liquidity on their venues represents a more significant percentage of the economics of each trade'').

[464] *See, e.g.,* ICI Letter I, at 2 (''Transaction fees and rebates also undermine market transparency because the prices displayed by exchanges—and provided on trade reports—do not include fee or rebate information and therefore do not fully reflect net trade prices.''); Goldman Sachs Letter, at 3 (stating that ''displayed prices do not reflect the actual economic costs because exchange fees and rebates are not reflected in those prices''); Oppenheimer Letter, at 2 (''[T]o the extent that transaction fees and rebates obfuscate the actual price bid or offered for a security, the 'maker-taker' pricing model has the potential to undermine price transparency . . . .'').

[465] In response to commenters who complained that the Pilot's fee cap Test Group applies to fees to provide liquidity, instead of being limited to fees to remove liquidity as is the case for Rule 610(c), and therefore it is ''unrelated'' to the existing fee regime and the Rule 610(c) construct, the Commission notes that when it adopted the Rule 610(c) fee cap it expressly noted that it would ''monitor the operation of these rules to assess whether in practice . . . broader coverage of the rule is necessary.'' *See* NMS Adopting Release, *supra* note 10, at 37546.

[466] IEX Letter I, at 6.

[467] Verret Letter I, at 2. *See also* IAC Recommendation, at 1 (''[T]he purpose of the Pilot is not to consider imposing price controls, but instead to consider requiring fees (of whatever size) to be structured so as to minimize complexity and agency costs.'').

[468] IEX Letter I, at 6–7 (''The fact that the SEC has not previously chosen to use its authority to prohibit rebates, or test their elimination through a pilot, does not mean it lacks authority. . . .''); *see also* Verret Letter I, at 3.

[469] IEX Letter II, at 9. *See also* Verret Letter I, at 2 (stating that ''one might properly describe the Reg NMS regime as itself a decade-long experiment in price controls'').

[470] IEX Letter I, at 7; IEX Letter II, at 9 (''NYSE seems to be saying, 'We are fine with the current fee regulation, because we have been able to operate very profitably under it, but it would be illegal to even test different fee restrictions unless you impose them on ATSs.''). *See also, e.g.,* Verret Letter I, at 2 (''Exchanges appear comfortable when price controls on the liquidity taking side benefit their business models, but challenge the Commission's authority to implement what they describe as price controls when their own business models are negatively impacted.''); Larry Harris Letter, at 6 (noting that ''exchange holding companies have a strong interest in maintaining the current system'' and that the ''SEC may reasonably consider these interests when evaluating comments submitted by the exchanges); Themis Trading Letter II, at 3 (stating that the Commission should not be ''distracted. . . by conflicted stock exchanges desperately fearful that their business models might come crashing down'').

[471] *See, e.g.,* Cboe Letter I, at 9.

[472] NYSE Letter I, at 12.

[473] *Id. See also* Cboe Letter I, at 11. For example, the commenter noted that the Commission had ''provided no analysis or discussion demonstrating its reasoned decision-making of how the specific fee structures to be mandated in the Proposal would be equitably allocated or reasonable'' under Section 6 of the Exchange Act. NYSE Letter I, at 12. *See also* 15 U.S.C. 78f(b)(4) (requiring the rules of an exchange to ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'').

[474] If any of the provisions of these amendments, 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.

[475] 44 U.S.C. 3501 *et seq.*

a notice requesting comment on the collection of information requirements in the Proposing Release [476] and submitted relevant information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA and its implementing regulations.[477] The title of the new collection of information for Rule 610T is ''Transaction Fee Pilot Data.'' Compliance with these collections of information requirements is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number. We have applied for an OMB Control Number for this collection of information.

The Commission requested comment on the collection of information requirements in the Proposing Release. The Commission received two comment letters on the estimates for the collection of information requirements included in the Proposing Release, which are discussed below.[478]

A. Summary of Collection of Information

The Pilot requires the equities exchanges to prepare four sets of data that constitute a collection of information within the meaning of the PRA. First, pursuant to Rule 610T(b), the primary listing exchanges will be required to prepare and publicly post two sets of data on the Pilot Securities listed on their markets—the Pilot Securities Exchange Lists and the Pilot Securities Change Lists.[479] In addition, pursuant to Rule 610T(d), all equities exchanges will be required to provide to the Commission monthly order routing datasets.[480] Lastly, pursuant to Rule 610T(e), all equities exchanges will be required to prepare and publicly post the Exchange Transaction Fee Summaries, which are monthly summaries of information concerning fees assessed and rebates paid to market participants transacting on the exchange.[481]

B. Proposed Use of Information

The data collected during the Pilot, including the Pilot Securities Exchange Lists, Pilot Securities Change Lists, Exchange Transaction Fee Summaries, and order routing datasets, will allow researchers and market participants to have ready access to information that will facilitate the study of the impact of an exogenous shock to transaction fees and rebates on order routing behavior, execution quality, and market quality. In turn, this information should facilitate a data-driven evaluation of future policy choices.

In addition, by publishing and maintaining a Pilot Securities Exchange List and a Pilot Securities Change List, each primary listing exchange would help ensure that the Commission, market participants, researchers, and the public have up-to-date information on corporate changes to listed issuers that impact the list of Pilot Securities, as well as changes to the composition of any of the Test Groups during the Pilot.

C. Respondents

The respondents to this collection of information will be the equities exchanges, which are registered national securities exchanges that trade NMS stocks. Specifically, Rule 610T(b), which covers the Pilot Securities Exchange Lists and Pilot Securities Change Lists, will apply to the six primary listing exchanges for NMS stocks. Rule 610T(d), which requires datasets on order routing, will apply to all thirteen equities exchanges that are currently registered with the Commission. Rule 610T(e), which requires datasets on fees (rebates) and fee (rebate) changes, will apply to all thirteen equities exchanges currently registered with the Commission.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

The burdens associated with the Pilot are described fully below, but the below table briefly summarizes the relevant burdens set forth in the Proposing Release and in this release.

Category	Release	Annual burdens (hours/ exchange)	One-time burdens (hours/ exchange)
Pilot Securities Exchange Lists	Proposing Release	N/A	8
	Adopting Release	N/A	44
Pilot Securities Change Lists	Proposing Release	126	12
	Adopting Release	126	12
Exchange Transaction Fee Summaries	Proposing Release	64	86
	Adopting Release	64	86
Order Routing Datasets	Proposing Release	112	80
	Adopting Release	124	80

1. Pilot Securities Exchange Lists and Pilot Securities Change Lists

Upon publication of the initial List of Pilot Securities by the Commission, the primary listing exchanges would be required to determine which Pilot Securities are listed on their market and compile and publicly post downloadable files containing a list of those securities, including all data fields specified in Rule 610T(b)(2)(i) on their websites in pipe-delimited ASCII format. The Commission preliminarily estimated that each primary listing exchange would incur, on average, a one-time burden of approximately 8 burden hours per primary listing exchange to compile and publicly post its initial Pilot Securities Exchange List.[482] One commenter stated that it ''anticipates it could take as many as 44 hours'' to compile the initial Pilot Securities Exchange List.[483] The commenter stated that its estimates of the costs associated with the Pilot are based on its ''prior experience implementing the Tick Size Pilot, and other similar initiatives . . . .'' [484] In light of this comment, the Commission is increasing its estimate. While, unlike for the Tick Size Pilot, the Commission will prepare the Initial List of Pilot Securities and assign them to their

[476] *See* Proposing Release, *supra* note 2, at 13038–39.

[477] 44 U.S.C. 3507; 5 CFR 1320.11.

[478] *See* NYSE Letter I, at 15; Cboe Letter I, at 21.

[479] *See supra* Section II.E.0.

[480] *See supra* Section II.E.3.

[481] *See supra* Section II.E.0.

[482] *See* Proposing Release, *supra* note 2, at 13036. The Commission based this estimate on a full-time Compliance Manager and Programmer Analyst each spending approximately 4 hours, for a combined total of approximately 8 hours, to compile and publicly post to an exchange's website a downloadable file containing the initial Pilot Securities Exchange List. *See id.* at 13036 n.186.

[483] *See* NYSE Letter I, at 15.

[484] *See id.*

respective treatment groups, and therefore the exchanges will only need to separate out their listed securities into a separate list, the Commission nevertheless will increase its estimate as the commenter suggested. Accordingly, the Commission estimates that each primary listing exchange would incur, on average, a one-time burden of approximately 44 burden hours per primary listing exchange to compile and publicly post their initial Pilot Securities Exchange List.[485] Accordingly, the Commission believes that the aggregate one-time burden associated with the initial Pilot Securities Exchange Lists would be 264 burden hours.[486]

After posting its initial Pilot Securities Exchange List, each equities exchange will be required to keep current that list to reflect any changes, and to also prepare and publicly post on its website until the end of the post-Pilot Period the Pilot Securities Change List prior to the beginning of trading each trading day. The Commission preliminarily estimated that each primary listing market would incur a one-time burden of approximately 12 burden hours of internal legal, compliance, and information technology operations to develop appropriate systems to track and compile changes relevant to Pilot Securities listed on its market.[487] The Commission also preliminarily estimated that, once the primary listing exchanges have established these systems, on average, each primary listing exchange would incur 0.5 burden hours daily, or 126 burden hours annually to compile any changes related to Pilot Securities, such as name changes or mergers, and to publicly post the updated Pilot Securities Exchange Lists and Pilot Securities Change Lists on its website prior to the start of each trading day.[488]

One exchange commenter stated that ''the Commission predicts it that would take only 12.5 hours to develop and maintain systems to comply'' with the requirements to update prior to the start of each trading day the Pilot Securities Exchange Lists and Pilot Securities Change Lists.[489] Based on ''its prior experience implementing the Tick Size Pilot, and other similar initiatives,'' this commenter further stated that it believed ''it could take as many as 300.5 hours to develop and maintain those systems.'' [490] While the commenter did not elaborate on how it computed its estimate or whether it represents an aggregate burden estimate or an annualized estimate, the commenter appears to have misunderstood the burden estimates contained in the Proposing Release because the Commission's estimate greatly exceeded 12.5 hours. Specifically, the Commission's preliminary estimates included a one-time burden of 8 hours for primary listing exchanges to compile and publicly post the initial Pilot Securities Exchange List, a one-time burden of 12 hours for primary listing exchanges to develop appropriate systems to track and compile changes to Pilot Securities, and an ongoing burden of 126 hours annually to compile any such changes and publicly post the updated Pilot Securities Exchange Lists and Pilot Securities Change Lists, for an aggregate burden estimate of 335 hours per exchange for the entire Pilot.[491] Assuming that the commenter's estimate of 300.5 hours is meant to be an aggregate burden estimate, the Commission notes that its revised aggregate burden estimate of 371 hours exceeds the commenter's estimate.

The Commission's estimates are averages that take into account the diverse set of six primary listing exchanges and the expected burdens that they would collectively experience as a result of the Pilot. Moreover, the Commission expects that the primary listing exchanges will be able to leverage their experience and resources from the recent Tick Size Pilot to meet the requirements of the Pilot. As noted above, unlike for the Tick Size Pilot, the Commission will set the initial List of Pilot Securities and the primary listing exchanges only need to keep those lists up to date if their listed issuers experience any relevant change. Accordingly, the burdens on the primary listing exchanges with respect to the lists of Pilot Securities should be less than those incurred during the Tick Size Pilot.[492]

For those reasons, the Commission continues to believe its estimate of the aggregate one-time burden for primary listing exchanges to develop appropriate systems to track and compile changes relevant to Pilot Securities listed on their markets will be approximately 12 burden hours for each primary listing exchange, or 72 total burden hours, and the average, aggregate annual burden to update and publicly post the lists of Pilot Securities will be approximately 126 burdens hours for each primary listing exchange, or 756 total burden hours for all 6 exchanges.[493]

2. Exchange Transaction Fee Summaries

The Commission is requiring that each equities exchange publicly post on its websites the Exchange Transaction Fee Summary each month, using an XML schema published on the Commission's website. The Commission believes that all the data necessary to complete the summary are currently maintained by the equities exchanges. However, the equities exchanges will be required to compute the monthly realized average and median per share fees and rebates, each by participant type, that qualified for the Base and Top Tier fees and rebates, using fee and volume information that the equities exchanges maintain.

The Commission preliminarily estimated that each equities exchange would incur a one-time burden of approximately 80 burden hours of internal legal, compliance, information technology, and business operations to develop appropriate systems for tracking fee changes, computing the monthly averages, and formatting the data and posting it on its website.[494] One commenter objected generally to the Commission's burden estimates, but

[485] The Commission continues to believe that this will require the services a full-time Compliance Manager and Programmer Analyst. The Commission estimates that each Compliance Manager and Programmer Analyst will each spend approximately 22 hours, for a combined total of approximately 44 hours, to compile and publicly post to an exchange's website a downloadable file containing the initial Pilot Securities Exchange List.

[486] 44 burden hours per primary listing exchange × 6 primary listing exchanges = 264 burden hours.

[487] The Commission derived the total estimated burdens from the following estimates: (Attorney at 4 hours) + (Compliance Manager at 4 hours) + (Programmer Analyst at 4 hours) = 12 burden hours. *See* Proposing Release, *supra* note 2, at 13036.

[488] The Commission based this estimate on a full-time Compliance Manager and Programmer Analyst together spending approximately 30 minutes per trading day updating and posting the required lists (approximately 252 trading days × 30 minutes per trading day = 7,560 minutes (126 hours)). *See id.*

[489] NYSE Letter I, at 15.

[490] *Id. See also* Cboe Letter I, at 21 (stating that the ''implementation and ongoing costs of the Pilot will be significantly larger in terms of burden hours and expenditures than the Commission estimates,'' but providing no specific analysis or alternative estimates).

[491] *See* Proposing Release, *supra* note 2, at 13036. The Commission notes that it has revised its aggregate burden estimate upwards to 371 hours for each exchange to address commenter concerns that the estimated burden associated with compiling and publicly posting the initial Pilot Securities Exchange List was too low.

[492] *See* Proposing Release, *supra* note 2, at 13027 n.153 and accompanying text; note 740 *infra.*

[493] 126 burden hours per primary listing exchange × 6 primary listing exchanges = 756 burden hours.

[494] *See* Proposing Release, *supra* note 2, at 13037. The Commission preliminarily estimated that an equities exchange would assign responsibilities for review and potential modification of its systems and technology to an Attorney, a Compliance Manager, a Programmer Analyst and a Senior Business Analyst. The Commission estimated the burden of reviewing and potentially modifying its systems and technology to be as follows: (Attorney at 20 hours) + (Compliance Manager at 20 hours) + (Programmer Analyst at 20 hours) + (Business Analyst at 20 hours) = 80 burden hours per equities exchange. *See id.* at 13037 n.194.

did not provide its own estimates of specific burden hours or costs.[495] The Commission continues to estimate that each equities exchange will incur a one-time burden of approximately 80 burden hours of internal legal, compliance, information technology, and business operations to develop appropriate systems for tracking fee changes, computing the monthly averages, and formatting the data and posting it on its website.[496] Accordingly, the one-time initial aggregate burden for all equities exchanges necessary for the development and implementation of the systems needed to capture the transaction fee information and post it on their websites in the specified format in compliance with Rule 610T(e) will be 1,040 hours.[497]

The Commission also preliminarily estimated that, on average, an equities exchange would incur an ongoing burden of approximately 40 burden hours per year, approximately half the estimated burden to develop appropriate systems, to monitor and, if necessary, update its systems used for compiling, formatting and publicly posting the Exchange Transaction Fee Summaries.[498] One commenter objected generally to the Commission's burden estimates, but did not specifically explain whether or how this burden estimate was incorrect.[499] The Commission continues to estimate that the annual ongoing burdens associated with monitoring and, if necessary, updating these systems would be approximately half the burdens of initially developing the systems. Accordingly, the Commission continues to estimate that an equities exchange will incur an ongoing burden of approximately 40 burden hours per year to monitor, and if necessary, update its systems used for compiling, formatting and publicly posting the Exchange Transaction Fee Summaries.[500] The average aggregate, ongoing, annual burden for all equities exchanges to monitor their systems will be 520 hours.[501]

The equities exchanges will be required to format, calculate certain figures, and post their initial Exchange Transaction Fee Summary at the outset of the pre-Pilot Period. As this would be the first time an equities exchange would be required to produce and post on its website such a summary, the Commission preliminarily estimated that it would require approximately 4 burden hours for each equities exchange to complete the initial Exchange Transaction Fee Summary and perform the necessary calculations.[502] In addition, each equities exchange will be required to make its summary publicly available on its website using an XML schema to be published on the Commission's website. As the Commission preliminarily believed that the equities exchanges had experience applying the XML format to market data,[503] the Commission estimated that initially each equities exchange would incur a burden of 2 burden hours specific to the initial Exchange Transaction Fee Summary to ensure that it has properly implemented the XML schema.[504] One commenter objected generally to the Commission's burden estimates, but did not specifically explain whether or how this burden estimate was incorrect.[505] The Commission continues to estimate that each equities exchange will require approximately 4 burden hours to complete the initial Exchange Transaction Fee Summary,[506] for an aggregate, initial burden of 52 hours to complete its initial Exchange Transaction Fee Summary.[507] The Commission also continues to estimate that each equities exchange will incur an initial burden of approximately 2 burdens hours for an aggregate, initial burden of 26 hours to post that dataset publicly on its website using an XML schema to be published on the Commission's website. The total aggregate, initial burden to complete the initial Exchange Transaction Fee Summary will therefore be 78 burden hours.[508]

Each equities exchange will be required to update the Exchange Transaction Fee Summary on a monthly basis to account for changes from the prior month, if any, and to report monthly fee and rebate information. The Commission preliminarily believed that such updates would require fewer burden hours than the initial Exchange Transaction Fee Summary, as the equities exchanges would have experience calculating necessary data and formatting the reports as required by the Rule.[509] Accordingly, the Commission preliminarily estimated that it would require approximately 2 burden hours each month, or 24 burden hours on an annualized basis, for each equities exchange to update the Exchange Transaction Fee Summary.[510] This estimate contemplated the impact of publicly posting the summary using the XML schema to be published on the Commission's website. One commenter objected generally to the Commission's burden estimates, but did not specifically explain whether or how this burden estimate was incorrect.[511] The Commission continues to estimate that it will require approximately 2 burden hours each month, or 24 burden hours on an annualized basis, for each equities exchange to update the Exchange Transaction Fee Summary.[512] As such, the equities exchanges will incur an aggregate, annual burden of 312 burden hours to update and publicly post on

[495] Cboe Letter I, at 21 (stating that the ''implementation and ongoing costs of the Pilot will be significantly larger in terms of burden hours and expenditures than the Commission estimates,'' but providing no specific analysis or alternative estimates). *But cf.* Better Markets Letter, at 2 (''All of the data-fields are thoughtfully proposed, and the cost of producing them is minimal and certainly acceptable given the enormity of the benefits.'' The commenter did not provide specific burden hour or cost estimates.).

[496] (Attorney at 20 hours) + (Compliance Manager at 20 hours) + (Programmer Analyst at 20 hours) + (Business Analyst at 20 hours) = 80 burden hours per equities exchange.

[497] 80 burden hours per equities exchange × 13 equities exchanges = 1,040 burden hours.

[498] *See* Proposing Release, *supra* note 2, at 13037. (Attorney at 10 hours) + (Compliance Manager at 10 hours) + (Programmer Analyst at 10 hours) + (Senior Business Analyst at 10 hours) = 40 burden hours.

[499] *See* note 495 *supra.*

[500] (Attorney at 10.5 hours) + (Compliance Manager at 10.5 hours) + (Programmer Analyst at 11 hours) + (Senior Business Analyst at 10.5 hours) = 40 burden hours.

[501] 40 burden hours per equities exchange × 13 equities exchanges = 520 burden hours.

[502] *See* Proposing Release, *supra* note 2, at 13037. The Commission derived the total estimated burden from the following estimates: (Compliance Manager at 2 hours) + (Senior Business Analyst at 2 hours) = 4 burden hours per equities exchange. *See id.* at 13037 n.198.

[503] *See id.* at 13037 n.199 and accompanying text.

[504] *See id.* at 13037. The Commission derived the total estimated burden from the following estimates, which reflect the Commission's preliminary belief that the equities exchanges have experience posting information in an XML format on publicly-available websites: (Compliance Manager at 1 hour) + (Programmer Analyst at 1 hour) = 2 burden hours per equities exchange. *See id.* at fn. 200.

[505] *See* note 495 *supra.*

[506] (Compliance Manager at 2 hours) + (Senior Business Analyst at 2 hours) = 4 burden hours per equities exchange.

[507] 4 burden hours per equities exchange × 13 equities exchanges = 52 burden hours.

[508] 2 burden hours per equities exchange × 13 equities exchanges = 26 burden hours.

[509] *See* Proposing Release, *supra* note 2, at 13037.

[510] *See id.* The Commission derived the total estimated burden from the following estimates: (Compliance Manager at 1 hour) + (Programmer Analyst at 1 hour) = 2 burden hours per equities exchange per month. 2 burden hours per equities exchange per month × 12 months per year = 24 burden hours per equities exchange per year. *See id.* at 13037 n.203.

[511] *See* note 495 *supra.*

[512] (Compliance Manager at 1 hours) + (Programmer Analyst at 1 hours) = 2 burden hours per equities exchange per month. 2 burden hours per equities exchange per month × 12 months per year = 24 burden hours per equities exchange per year.

their websites the Exchange Transaction Fee Summaries.[513]

3. Order Routing Datasets

The Commission preliminarily estimated that, on average, there would be no paperwork burden to the equities exchanges to capture the order routing data required pursuant to Rule 610T(d) to be included in the order routing datasets, as the Commission expected that the equities exchanges would collect the required data to create the order routing datasets by leveraging existing systems and technology already in place for the collection and reporting of data.[514] The Commission believes this continues to be true with the changes to the order routing datasets, which also involve data elements currently captured by existing systems.

The Commission preliminarily believed, however, that the equities exchanges would incur an initial one-time burden of 80 burden hours per equities exchange to ensure that their systems and technology are able to accommodate the proposed requirements to aggregate, anonymize, and publicly post the order routing information.[515] While the exchanges will still need to aggregate the data, they no longer will need to anonymize and publicly post it and instead will transmit the information to the Commission. The Commission continues to believe that each equities exchange would incur an initial one-time burden of 80 burden hours to ensure that its systems and technology are able to accommodate the requirements to aggregate and provide to the Commission the order routing information. Accordingly, the Commission estimates that the aggregate one-time initial burden for ensuring an exchange's systems and technology are able to aggregate and provide to the Commission the required order routing data in compliance with Rule 610T(d) will be 1,040 burden hours.[516]

The Commission also preliminarily estimated that, on average, it would take an equities exchange approximately 40 burden hours per year to ensure that the systems and technology are up to date so as to facilitate compliance with the Rule.[517] The Commission continues to estimate that, on average, it would take an equities exchange approximately 40 burden hours per year to ensure that the systems and technology are up to date so as to facilitate compliance with the Rule. Therefore, the Commission estimates that the aggregate annual burden to maintain the systems necessary to aggregate and provide to the Commission the required order routing information is approximately 520 burden hours per year.[518]

Each equities exchange would incur an ongoing burden associated with creating and formatting the order routing datasets each month. The Commission noted that the equities exchanges have experience with creating similar datasets in accordance with their obligations under Rule 605 of Regulation NMS.[519] The Commission preliminarily believed that each equities exchange would incur burdens similar to those associated with preparing Rule 605 reports.[520] Accordingly, the Commission preliminarily believed that each equities exchange would incur a burden of six burden hours per month, or 72 burden hours per year, to prepare and publicly post on its website the order routing datasets.[521] While the order routing datasets will not be publicly posted but will instead be provided to the Commission, the Commission is requiring the equities exchanges to separate out post-only orders and auction-only orders (or exclude auction-only orders if they so choose). The Commission estimates that separating out these orders will require approximately 1 additional burden hour per month. As such, the Commission estimates that each equities exchange will incur a burden of approximately seven burden hours per month, or 84 burden hours per year, to prepare and provide to the Commission the order routing datasets. Therefore, the aggregate, annual burden to prepare and provide to the Commission order routing datasets in accordance with Rule 610T(d) will be approximately 1,092 burden hours.[522]

One exchange commenter stated that ''the Commission allocates 160 hours associated with producing order routing data,'' but estimated that it ''would actually require over 400 hours,'' based on ''its prior experience implementing the Tick Size Pilot, and other similar initiatives . . . .'' [523] While the commenter did not elaborate on how it computed its estimate or whether it represents an aggregate burden estimate or an annualized estimate, the commenter appears to have misunderstood the burden estimates contained in the Proposing Release because the Commission's estimate exceeds the 160 hours cited by the commenter. Specifically, the Commission's preliminary estimate included a one-time burden of 80 hours and an ongoing burden of 112 hours annually,[524] for an aggregate burden estimate of 416 hours per exchange for the entire Pilot.[525] Second, the commenter does not explain how it calculated its estimate of ''over 400 hours,'' break down the costs included in this estimate, or specify whether this number is an aggregate burden estimate or an annualized estimate. Assuming that the commenter's estimate of over 400 hours is meant to be an aggregate burden estimate, the Commission notes that its revised aggregate burden estimate of 452 hours is substantially similar. The Commission notes that exchanges will no longer be required to publicly post this data, but will instead transmit the datasets directly to the Commission. Moreover, the Commission expects that the exchanges will be able to leverage their experience and

[513] 2 burden hours per equities exchange × 13 equities exchanges × 12 monthly updates = 312 burden hours per year.

[514] *See* Proposing Release, *supra* note 2, at 13038.

[515] *See id.* The Commission preliminarily estimated that an equities exchange will assign responsibilities for review and potential modification of its systems and technology to an Attorney, a Compliance Manager, a Programmer Analyst and a Senior Business Analyst. The Commission estimated the burden of reviewing and potentially modifying its systems and technology to be as follows: (Attorney at 20 hours) + (Compliance Manager at 20 hours) + (Programmer Analyst at 20 hours) + (Senior Business Analyst at 20 hours) = 80 burden hours per equities exchange. *See id.* at 13038 n.207.

[516] 80 burden hours per equities exchange × 13 equities exchanges = 1,040 burden hours.

[517] *See* Proposing Release, *supra* note 2, at 13038. The Commission derived the total estimated burdens from the following estimates, which reflected the Commission's preliminary view that annual ongoing burdens would be approximately half the burdens of initially ensuring an exchange has the appropriate systems to capture the required information in the required format: (Attorney at 10 hours) + (Compliance Analyst at 10 hours) + (Programmer Analyst at 10 hours) + (Business Analyst at 10 hours) = 40 burden hours per equities exchange. *See id.* at 13038 n.209.

[518] 40 burden hours per equities exchange × 13 equities exchanges = 520 burden hours.

[519] *See* Proposing Release, *supra* note 2, at 13038.

[520] *See id. See also* FR Doc. 2016–08552, 81 FR 22143 (April 14, 2016) (''Request to OMB for Extension of Rule 605 of Regulation NMS'').

[521] Compliance Manager at 3 hours + Programmer Analyst at 4 hours = 7 burden hours per month, per equities exchange. 7 burden hours per month × 12 months = 84 burden hours per year, per equities exchange.

[522] 84 burden hours per year × 13 equities exchanges = 1,092 burden hours.

[523] NYSE Letter I, at 15. *See also* Cboe Letter I, at 21 (stating that the ''implementation and ongoing costs of the Pilot will be significantly larger in terms of burden hours and expenditures than the Commission estimates,'' but providing no specific analysis or alternative estimates).

[524] The Commission notes that it has revised this estimate upwards to 124 burden hours annually.

[525] *See* Proposing Release, *supra* note 2, at 13038. The Commission notes that it has revised this estimate upwards to 452 burden hours per exchange for the entire Pilot.

resources from the Tick Size Pilot to meet the requirements of the Pilot.[526]

For those reasons, the Commission believes its estimate of the one-time burden for exchanges to develop and implement appropriate systems to aggregate the order routing data will be, on average, 80 burden hours for each exchange, and the ongoing annual burden to update these systems and to gather and to transmit the relevant data to the Commission will be, on average, 124 burden hours for each exchange.

E. Collection of Information Is Mandatory

All of the collections of information pursuant to Rule 610T would be mandatory.

F. Confidentiality of Responses to Collection of Information

The Commission believes that the broker-dealer specific order routing data should be protected from disclosure subject to the provisions of applicable law.[527] The Commission will deem broker-dealer identifying order routing data as being subject to a confidential treatment request under 17 CFR 200.83 without the need to submit a request. The Pilot Securities Exchange List, Pilot Securities Change List, and the Exchange Transaction Fee Summary would not be confidential. Rather, each would be publicly posted by the exchanges.

G. Retention Period for Recordkeeping Requirements

National securities exchanges would be required to retain records and information pursuant to 17 CFR 240.17a–1 (Rule 17a–1 under the Exchange Act).[528]

IV. Economic Analysis

As discussed above, the Pilot is designed to produce information on the impact of transaction fee-and-rebate pricing models on order routing decisions by broker-dealers, as well as their impact on execution and market quality.[529] In recent years, a number of academics and market participants have expressed concern that the structure of exchange transaction-based fee pricing may lead, for example, to potential conflicts of interest between broker-dealers and their customers when brokers-dealers route customer orders to trading centers offering rebates so that the broker-dealer can capture the rebates, even when these venues do not offer high execution quality.[530] However, as discussed in more detail below, the Commission cannot determine from existing empirical evidence the impact, if any, of exchange transaction fee models on order routing decisions by broker-dealers or on market and execution quality.[531] Specifically, determining whether a causal relationship between exchanges' transaction fee-and-rebate pricing models and broker-dealers' behavior is complicated because, for example, such pricing models and order routing decisions could be jointly determined and order routing decisions could influence fees just as fees could influence order routing decisions. Currently available data do not permit researchers to isolate these factors and thus identify the existence or direction of such a causal relationship, which in turn impedes researchers' ability to determine the extent to which conflicts may exist and any potential negative impacts may manifest.[532]

Because of the existing lack of empirical evidence regarding the potential conflicts of interest and potential effects of exchange fee models, additional information would assist the Commission in making future regulatory decisions. To remedy the insufficiency of existing empirical evidence, the Commission is adopting the Pilot to generate data that is otherwise unavailable to study fees and rebates that exchanges assess to broker-dealers and observe the impacts of those fees and rebates on the markets and market participants. Specifically, the Commission expects that the data collected is likely to shed light on the extent, if any, to which broker-dealers route orders in ways that benefit the broker-dealer but may not be optimal for customers, and the extent to which exchange pricing models create distortions that may have adverse impacts. The data obtained from the Pilot will inform future regulatory initiatives to the ultimate benefit of investors.[533] In addition, the Pilot will provide information about other potential economic effects of reducing access fee caps or prohibiting rebates and Linked Pricing. For example, the Pilot could offer information on whether prohibiting rebates and Linked Pricing alters broker-dealer behavior in a manner that affects market quality, such as by impacting quoted spreads across NMS stocks.[534]

The Pilot is uniquely capable of generating empirical evidence that is currently lacking because it is designed to provide an exogenous shock to transaction fee-and-rebate pricing models across all exchanges simultaneously and facilitate the collection of representative data across a broad range of securities.[535] An exogenous shock to a system occurs when an element of the system is changed from without the system. (*i.e.,* the change or shock is not under the control or influence of those within the system) but can induce endogenous (*i.e.,* within the system) responses. In the Pilot's context, the exogenous shock

[526] *See* Section C.2.a.iii. *infra. See also, e.g.,* Better Markets Letter, at 2.

[527] *See, e.g.,* 5 U.S.C. 552 *et seq.*; 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[528] 17 CFR 240.17a–1.

[529] Execution quality generally refers to how favorably customer orders are executed. Execution quality measures are similar to liquidity measures and tend to include transaction costs, the speed of execution, the probability that the trade will be executed, and the price impact of the trade. *See* NMS Adopting Release, *supra* note 10, at 37513–15, 37537–38. Market quality encompasses execution quality but also relates more generally to how well the markets function. Market quality measures include liquidity, price discovery, and volatility in prices. *See, e.g.,* Henrik Bessembinder, Trade Execution Costs and Market Quality after Decimalization, 38 J. Fin. & Quantitative Analysis 747–77 (2003), *https://doi.org/10.2307/4126742https://doi.org/10.2307/4126742;* Maureen O'Hara & Mao Ye, *Is Market Fragmentation Harming Market Quality?* 100 J. Fin. Econ. 459–74 (2011), *https://doi.org/10.1016/j.jfineco.2011.02.006.*

[530] *See, e.g.,* James Angel, Lawrence Harris & Chester Spatt, *Equity Trading in the 21st Century,* 1 Q. J. Fin. (2011), *https://doi.org/10.1142/S2010139211000067* (hereinafter ''Angel, Harris, & Spatt''); Robert H. Battalio, Shane A. Corwin, & Robert H. Jennings, Can Brokers Have It All? On the Relation Between Make-Take Fees and Limit Order Execution Quality, 71 J. Fin. 2193–237 (2016), *http://onlinelibrary.wiley.com/doi/10.1111/jofi.12422/full* (hereinafter ''Battalio Equity Market Study''); Larry Harris, Maker-Taker Pricing Effects on Market Quotations 24–25 (USC Marshall Sch. Bus., Draft No. 0.91, 2013), *http://bschool.huji.ac.il/.upload/hujibusiness/Maker-taker.pdf* (hereinafter ''Harris'').

[531] For commenters concurring with this assessment, *see, e.g.,* Barnard Letter, at 1 (stating the Pilot ''should provide credible analyses of the effects—both positive and negative—of exchange fees and rebates on the quality and efficiency of trading.''); Better Markets Letter at 2 (stating that the Commission ''lacks sufficient data to outlaw rebates'' and believed that the Pilot ''should fill this data and knowledge gap.'').

[532] Many commenters expressed support for the Pilot and the utility of the information that may be gained from it. *See* AJO Letter, at 1, CII Letter, at 3, NYSTRS Letter, at 1, ICI Letter I, at 1–2, MFS Letter, at 1, Nuveen Letter, at 2, Clark-Joseph Letter, at 1, RBC Letter I, at 2, Invesco Letter, at 2, CFA Letter, at 1, State Street Letter, at 2, Wellington Letter, at 1, Joint Pension Plan Letter, at 2, Oppenheimer Letter, at 2, Angel Letter I, at 1, Vanguard Letter, at 2, Verret Letter I, at 1, T. Rowe Price Letter, at 1.

[533] *See, e.g.,* Babelfish Letter, at 3; Clearpool Letter, at 2; T. Rowe Price Letter, at 1, 3, and Clark-Joseph Letter, at 1.

[534] *See infra* Section V.C.1.a.ii, for further discussion of the benefits of studying other economic effects of transaction fees and rebates.

[535] *See infra* Section V., for discussion of existing studies related to these topics and their limitations. *See also supra* Section II.B (discussing the Nasdaq study, which examined a change in the access fees and rebates charged by Nasdaq for 14 stocks over a four-month period).

takes the form of a reduction of the maximum permissible transaction fees and a prohibition on rebates and Linked Pricing on all U.S. equities exchanges. This shock will allow researchers to explore how changes to fees and rebates could lead to changes in broker-dealer order routing and market and execution quality for a broad sample of NMS securities.[536] Specifically, the reduction in fees or the elimination of rebates and Linked Pricing, as required in specific Test Groups of the Pilot, may reduce the magnitude or eliminate the potential conflict of interest between broker-dealers and their clients and the potential distortions introduced by exchange transaction-based fees and rebates. These effects would, in turn, be reflected in measurable changes to the order routing and execution quality of stocks in the Pilot's Test Groups.

The terms of the Pilot are discussed in Section II above. Exchanges will continue to be permitted to have varying fees within each Test Group, and will be permitted to change their fees at their discretion, subject to the proposed rule change filing requirements of Section 19 of the Exchange Act, during the Pilot for securities within each Test Group, so long as they comply with the conditions applicable to that Test Group.

In the absence of the Pilot, the Commission believes it is unlikely that exchanges would collectively undertake a similar pilot and voluntarily coordinate the exogenous shock to fees and rebates across a broad set of securities, broker-dealers, and exchanges that would be required to analyze the effects of changes to fees and rebates.[537] By imposing the same modifications to fees and rebates on all U.S. equities exchanges, the Pilot will allow researchers to obtain data that will permit them to examine the impact of changes to fees and rebates on the order routing decisions of broker-dealers. If all exchanges were not subject to the pilot terms, the pilot data would be limited because broker-dealers could redirect their order flow to the non-participating exchanges. Accordingly, the Commission believes that the Pilot will enable the collection of valuable data that would otherwise be unavailable.

The Commission is mindful of the costs imposed by, and the benefits obtained from, the rules it promulgates. Whenever the Commission engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires the Commission to consider whether the action would promote efficiency, competition, and capital formation, in addition to the protection of investors.[538] Further, when making rules under the Exchange Act, Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact such rules would have on competition.[539] Section 23(a)(2) of the Exchange Act also 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.[540]

A few commenters challenged the sufficiency of the economic analysis contained in the Proposal. For example, one commenter argued the proposal was ''arbitrary and capricious'' because the Commission failed to consider the economic consequences of its proposal and only partially framed the costs and benefits of the Proposal, ignoring important and significant factors and costs.[541] Similarly, another commenter believed that the ''cost-benefit analysis contain[ed] numerous flaws that are inconsistent with the Commission's obligation to provide a 'reasoned basis' for its regulations,'' namely that the Commission had ''substantially underestimated the costs of the Proposal'' and ''fail[ed] to identify any countervailing market benefit that justifies imposing . . . harms on . . . exchanges and issuers.'' [542] Another commenter thought the Commission understated the potential costs of the Pilot while overstating the benefits.[543] For example, some commenters noted that they anticipated the Pilot would result in wider spreads, increased transaction costs, and increased broker commissions, all of which would result in added costs to investors.[544] Several commenters thought the Commission failed to consider or underestimated the implementation costs of the Pilot,[545] while other commenters challenged these assertions and instead believed the Pilot would impose minimal costs on exchanges and broker-dealers, particularly in light of the existing processes and technology that currently support immediately effective fee changes from the exchanges.[546] Finally, other commenters felt that the economic analysis failed to adequately account for the projected costs to particular categories of market participant.[547]

Other commenters supported the Commission's analysis. For example, one commenter argued that ''differing estimates of costs is not a sufficient basis alone to challenge Commission action.'' [548] This commenter argued that the commenters ''tend to ignore the benefit side of cost-benefit analysis'' and believed that ''the most significant benefit of the pilot is its potential to inform subsequent rulemaking,'' such that the ''mere presence of uncertainty in the Commission's estimates of potential costs and benefits does not by itself open the pilot program to challenge.'' [549] While acknowledging the potential for ''liquidity effects,'' this commenter further noted that the Commission ''is merely held to make a reasonable estimate of those costs before adopting a pilot program,'' not to ''make a perfect estimate'' or ''cease the pilot if the costs to liquidity prove significant.'' [550]

The economic analysis provided in the Proposing Release thoroughly described the potential economic effects of the Transaction Fee Pilot, including the benefits, costs, and alternatives and

[536] *See, e.g.,* CII Letter, at 3, NYSTRS Letter, at 1, RBC Letter I, at 2, Joint Pension Plan Letter, at 2, Oppenheimer Letter, at 2

[537] *See, e.g.,* Clearpool Letter, at 2. As discussed above, Nasdaq conducted its own fee experiment, but other exchanges did not conduct similar experiments simultaneous with Nasdaq.

[538] *See* 15 U.S.C. 77b(b); 15 U.S.C. 78c(f).

[539] *See* 15 U.S.C. 78w(a)(2).

[540] *Id.*

[541] *See* Nasdaq Letter I, at 3, 11.

[542] NYSE Letter I, at 3, 12. *See also, e.g.,* Level Brands Letter, at 1; Johnson Letter, at 1; Sensient Letter; Tredegar Letter, at 1; Halliburton Letter, at 1.

[543] *See* ASA Letter, at 5. *See also* T.D. Ameritrade Letter, at 3 (estimating costs of widening spreads to its clients at $24,000,000).

[544] NYSE Letter I, at 13. *See also* TD Ameritrade Letter, at 3 (estimating costs of widening spreads to its clients at $24,000,000 annually) and Energizer Letter, at 1.

[545] *See* STANY Letter, at 2; Cboe Letter I, at 21; Nasdaq Letter I, at 10; FIA Letter, at 3; Citi Letter, at 5.

[546] *See, e.g.,* Vanguard Letter, at 3; Better Markets Letter, at 2; Healthy Markets Letter I, at 34; Angel Letter II, at 3.

[547] *See, e.g.,* Cboe Letter, at 7 n.14 and 20 (noting failure to adequately address lost revenue to exchanges); NYSE Letter I, at 3; NYSE Letter I, at 3 and 13 (addressing impact on small businesses and issuers); Apache Letter, at 2 (noting potential negative cost impacts to issuers engaged in secondary offerings or conducting share repurchasing programs); Nasdaq Letter I, at 8 (noting potential added cost to market makers when pricing arbitrage opportunities because of additional complexity in exchange pricing models under the Pilot).

[548] Verret Letter I, at 3–4. *See also* Verret Letter I, at 7 (asserting that ''[a]rguments by the Exchanges concerning the pilot proposal's failure to quantify costs are irrelevant, in so far as the proposal properly identifies where they might at present be unquantifiable and particularly where those unquantifiable costs relate to the data the pilot is intended to generate.'').

[549] Verret Letter I, at 3–4. *See also* IEX Letter III, at 8, 10 (arguing that these commenters ignore ''the full range of benefits that investors could realize if rebates were banned entirely'').

[550] Verret Letter I, at 4–5.

the potential effect on efficiency, competition, and capital formation.

Like the Proposing Release, where possible, the Commission has quantified below the likely economic effects of the Pilot; however, as explained further below, the Commission is unable to quantify all of the economic effects because it lacks the information necessary to provide reasonable estimates. In some cases, quantification depends heavily on factors outside of the control of the Commission, which makes it difficult to predict how market participants would act under the conditions of the Pilot. For example, because of the flexibility that market participants have with respect to the choice of trading center for execution of transactions and because those choices can be influenced by factors outside of the scope of the Pilot, such as volume discounts, the Commission cannot quantify, ahead of the Pilot, the economic impact of any changes in order routing decisions by broker-dealers that may result from the Pilot. Nevertheless, as described more fully below, the Commission provides both a qualitative assessment of the potential effects and a quantified estimate of the potential aggregate initial and aggregate ongoing costs, where feasible.

A. Background and Market Failures

The Commission's Proposal provided a review of transaction-based fee models, including a discussion of the history and mechanics of transaction-based pricing and an overview of the concerns about potential conflicts of interest between broker-dealers and their customers attributed to access fees and rebates assessed by exchanges as well as the potential distortions that exchange fee models can introduce into market structure.[551]

The Commission considered whether competition within the broker-dealer industry, as well as competition among the equities exchanges, is sufficient to alleviate potential conflicts of interest presented by exchange fees and rebates and also the potential distortions such fee-and-rebate models may introduce. The Commission believes that competition between broker-dealers may not be capable of addressing these potential conflicts and distortions for three reasons: asymmetric information, switching costs, and a lack of collective action, each of which is discussed below. Further, competition between broker-dealers is not readily capable of independently resolving the other potential concerns presented by exchange fee models, such as excessive intermediation, fragmentation, complexity, and cross-subsidization because those issues are within the exclusive control of the exchanges. The limitations of competition among the equities exchanges is discussed in detail below.

1. Market Failure at the Broker-Dealer Level

The Commission considered whether competition could alleviate potential conflicts of interest between investors and broker-dealers, as investors choose broker-dealers to place orders on their behalf.[552] To the extent that investors are able to identify broker-dealers that do not act on potential conflicts of interest in a manner inconsistent with the interests of their customers, investors could discourage broker-dealers from acting on such conflicts of interest and avoid doing business with those broker-dealers that do not offer such assurances. However, several commenters opined that competition and deference to market forces alone would not be sufficient to challenge the ''deeply rooted conflicts of interest'' that they believe are present in today's market structure.[553] For example, one commenter noted that many institutional clients are tied to large broker/dealers because of the multitude of services that their brokers provide, so they cannot simply ''fire their brokers'' if they are unhappy with their routing decisions.[554] Further, the Commission does not believe that competition among broker-dealers alone will be sufficient to address potential conflicts of interest in order routing decisions because of three conditions that are present in today's markets: asymmetric information, switching costs, and a lack of collective action.

First, asymmetric information between broker-dealers and their customers limits the ability of customers to identify broker-dealers that do not act on potential conflicts of interest.[555] For example, customers do not generally have access to information about broker-dealers' individual sources of revenue.[556] As discussed below in more detail, although disclosures required pursuant to Rule 606 provide information about material conflicts of interest related to payment for order flow, these disclosures do not provide information on the effect of transaction fee-and-rebate pricing models on order routing decisions. Moreover, while under Rule 606, a customer may request certain information about how her broker routed certain orders on her behalf, a customer cannot necessarily use this information to compare how these orders would have been treated by broker-dealers other than her own. Further while recent amendments to Rule 606 would provide customers with limited information about transaction fees paid and transaction rebates received by the broker, the disclosure would not provide data to enable the customer to assess the impact of exchange transaction fees and rebates on market quality and execution quality.

Second, even if investors had sufficient information to conclude they would be better served by a different broker-dealer, investors may face costs in switching broker-dealers.[557] If these switching costs are high relative to the costs that investors anticipate may arise from potential conflicts of interest, investors may not switch broker-dealers even if it appears that their broker-dealer may have acted on conflicts of interest.

The presence of switching costs also may exacerbate a collective action problem among investors.[558] Investors could provide incentives to broker-dealers to eliminate potential conflicts of interest by threatening to move accounts away from broker-dealers known to act on conflicts of interest. The collective action problem arises because, although each customer individually bears a cost to switch accounts, the benefits of a successful threat are available to all customers whether they would switch or not. If the

[551] *See* Proposing Release, *supra* note 2.

[552] *See* Section *infra* IV.B.2.a.

[553] *See, e.g.,* Better Market Letter at 1 (stating ''[p]ayments by the exchanges that incentivize and induce routing decisions by broker-dealers at the expense of best execution and market quality is one of the most entrenched and insidious market practices today, and requires forceful and independent intervention by the SEC.''). *See also* Themis Trading Letter at 4–5; Larry Harris Letter at 9; Clearpool at 2.

[554] *See* Themis Trading Letter I, at 5.

[555] *See* Larry Harris Letter, at 3 (noting that most brokerage customers do not know about potential broker agency problems and so do not know that their brokers may not be representing their orders as best they might).

[556] While consolidated revenues may be available from Form 10–K filings for broker-dealers that are public reporting companies, broker-dealers do not report revenues attributable to specific sources, such as rebates from a particular exchange or payments for order flow from a particular venue. For instance, revenues derived from commissions and fees are often just reported in aggregate as ''Commissions and Fees.'' Therefore, even though aggregate revenues for some broker-dealers are publicly available, customers do not have access to the information on individual sources of revenue that could reveal potential conflicts of interest.

[557] These switching costs may be monetary, but may also have a time and effort component.

[558] Collective action occurs when a number of individuals or entities work together to achieve a common objective, such as investors acting to reduce the potential conflicts of interest in order routing decisions by broker-dealers.

switching costs are high relative to the proportion of customer defections necessary to threaten a broker-dealer, customers are unlikely to generate enough of a threat to alter broker-dealers' behavior.

2. Market Failure at the Exchange Level

Several commenters considered whether existing market forces, including competition among the equities exchanges, are sufficient to address the potential distortions caused by exchange pricing models. Some commenters felt that ''some regulatory solution,'' like the Pilot, ''may be necessary to force market participants, particularly exchanges, to change the manner in which they conduct business'' because competitive pressures on exchanges may serve as a barrier to market-led reforms in this area.[559] Further, one commenter noted that ''market forces cause the exchanges to choose maker-taker and inverted fee models to the detriment of the public interest'' and therefore regulatory action is necessary to address market distortions caused by the maker-taker and taker-maker fee models.[560]

Further, the Commission notes that one market conducted a limited unilateral access fee experiment in 2015 to test the impact of reductions to its fees and rebates on 14 securities traded on its market. [561] Several commenters noted the limited utility of that study given its narrow scope and applicability to one market.[562] The fact that no other exchange joined in the 2015 access fee experiment, or independently undertook a similar study thereafter, supports the view that it is unlikely that competition among the exchanges alone would compel the exchanges to study, let alone address, potential distortions that may result from their fee and rebate models.

B. Baseline

We compare the economic effects of the rule, including benefits, costs, and effects on efficiency, competition, and capital formation, to a baseline that consists of the existing regulatory framework and market structure. As explained above, by temporarily altering the fee and rebate structure for certain NMS stocks (including ETPs), the Pilot is designed to produce information on order routing behavior that would not otherwise be available. The baseline, therefore, includes the existing information available to the Commission in the absence of a pilot, which the Commission could use to inform future regulatory action.[563] The baseline also sets out the exchanges' current practices with respect to fees and rebates and the regulations governing those fees and rebates.

1. Current Information Baseline

While the theoretical studies referenced in the Proposing Release suggest that transaction-based fee models create potential issues for investors,[564] limited empirical evidence exists to date about the extent that potential conflicts of interest arise from maker-taker and taker-maker pricing models and how exchange transaction-based fees and rebates impact market and execution quality and affect the integrity and structure of the U.S. equity markets.[565] Consequently, the relation between transaction-based pricing and conflicts of interest is not well understood.[566] Additionally, commenters are divided as to how to interpret existing knowledge. One Commenter stated that we had ''much to learn'' [567] while other commenters felt that there was sufficient existing knowledge to move directly to rule making without a Pilot.[568]

Below, we discuss the existing information currently available to the Commission or the public that concerns the relationship between transaction-based fee-and-rebate pricing models and order routing decisions and we describe the limitations of this information for use in policy discussions regarding transaction-based fees and rebates and the potential conflicts of interest and potential distortions that may accompany them. We then discuss the potential to produce additional information regarding the impact of exchange fees and rebates absent the Pilot.

While a number of studies attempt to document the relation between transaction-based fees, order routing decisions, and execution quality, these studies and available data sources are limited in ways that are likely to reduce the strength of conclusions that relate to the impact of transaction-based fees and rebates on order routing decisions and the existence or magnitude of potential conflicts of interest between broker-dealers and their customers. This section details these limitations.

a. Limitations of Existing Studies

Multiple commenters submitted empirical evidence that they argued was consistent with conflicts of interest. For example, one Commenter cited evidence that trade execution algorithms that are fee sensitive tend to have lower execution quality than algorithms that are not fee sensitive.[569] Another Commenter cited existing academic, industry, and government sources suggesting the existence of conflicts of interest, or of the investing public's perception that there exist conflicts of interest.[570] Another commenter suggested evidence existed that routing decisions were not always in the best interest of investors by arguing that adverse selection differs by exchange, and that this difference can be observed using TAQ data.[571] Another commenter presented their study arguing that

[559] Clearpool Letter, at 2. *See also* T. Rowe Price Letter, at 1 (''enthusiastically agree[ing] with the Commission that a pilot is necessary to gather data,'' in part because ''exchanges have little incentive to reduce the fee cap on their own''). *See also* Larry Harris Letter, at 9 (noting that ''regulatory action is necessary to establish a common pricing standard because market forces alone will not do it''). Larry Harris Letter, at 6 (noting that ''exchange holding companies have a strong interest in maintaining the current system'' and that the ''SEC may reasonably consider these interests when evaluating comments submitted by the exchanges''); Themis Trading Letter II, at 3 (stating that the Commission should not be ''distracted . . . by conflicted stock exchanges desperately fearful that their business models might come crashing down'').

[560] *See* Larry Harris Letter, at 9. *See also* Themis Trading Letter I, at 5 (noting that several exchanges oppose the pilot because they are motivated by their ''own profit incentives and not what is best for the market'').

[561] *See* Proposing Release, *supra* note 2, at 13011–12. *See also* Section IV.B.1.a.ii, *infra* discussing the Nasdaq Experiment in greater detail.

[562] *See, e.g.,* Themis Trading Letter I, at 3 (stating that a ''more comprehensive multilateral market-wide approach would be needed to yield usable data that could be used to test how lower access fees, and a lack of rebates, would impact market quality and marketplace behavior'' (emphasis omitted)); IEX Letter III, at 6 (''Nasdaq's experiment and its outcomes aren't a perfect proxy for what is likely to happen in the Transaction Fee Pilot. That experiment was done unilaterally and only in highly-liquid securities.''); Larry Harris Letter, at 9 (noting that Nasdaq's ''experimental fee reduction did not occur at all trading venues that traded the subject securities,'' demonstrating that ''regulatory action is necessary to establish a common pricing standard because market forces alone will not do it'').

[563] *See supra* Section IV.E.1 for the discussion of the alternative that the Commission proceed with rulemaking initiatives without first conducting the Pilot. That alternative differs from the baseline presented here because it directly presumes regulatory changes whereas the baseline for the Economic Analysis does not presume regulatory changes resulting from the Pilot.

[564] *See, e.g.,* Proposing Release *supra* note 6 at Section IV.A. and C.

[565] Several commenters supported the Pilot as a necessary step to produce data to inform the heavily contested debate surrounding the impact of exchange fees and rebates on order routing, market quality, and execution quality. *See, e.g.,* Barnard Letter, at 1 (''historically there are many views on this topic, but a paucity of credible data from which to draw conclusions''); Wellington Letter, at 1, and Clark-Joseph Letter, at 1.

[566] *See* Nuveen Letter, at 2

[567] *See* e.g., Spatt Letter, at 3

[568] *See* e.g., Larry Harris Letter, at 10

[569] *See* Babelfish Letter, at 2–3

[570] *See* CFA Letter, at 2

[571] *See* Healthy Markets Letter I, at 2, 6

longer queues lead to increased transaction costs, and connected longer queues with the practice of paying rebates.[572] Another Commenter referenced a study suggesting that trading costs vary across exchanges.[573]

Although the above listed commenters all felt that the evidence did suggest that fees and rebates led to conflicts of interest, other commenters did not come to the same conclusion. One commenter felt that there was ''no evidence that fee practices are harming investors or interfering with fair competition'' and consequently felt that a Pilot was not justified.[574] The studies and analysis presented by Commenters and the studies discussed below have significant limitations with regard to establishing causal links between fees and rebates and order routing decisions. These limitations fall primarily into two categories: (1) The results of the studies may not be representative, and (2) the results of the studies cannot make a causal connection needed to inform on potential conflicts of interest.

When a study's results are representative, the results can be applied across a broadly defined group. Drawing broad inferences from limited samples could be problematic because the results might be specific to specific securities, broker-dealers, or trading venues. In the context of regulatory decision-making, representative results should inform on the potential effects over the scope of the market covered by the decision. When results are not representative of the full scope of a regulatory decision, that regulatory decision may have an unpredictable effect over the part not represented by the results. For example, if the results of a study cover only certain types of issuers, the results may not apply to all types of issuers and therefore, any regulatory changes based on such studies may have unanticipated effects on the types of issuers not included in the study.

In addition to limitations in how representative results may be, existing studies cannot test for causal relationships between transaction fees and order routing decisions, even around fee revisions. Because transaction-based fees and order routing decisions could be jointly determined, researchers cannot readily disentangle the direction of causality, and therefore cannot determine the extent that potential conflicts exist. The identification of causal relations between fees and order routing decisions becomes increasingly complex because exchanges frequently modify their fees.[575] In practice, researchers attempt to identify and measure causal relations in two ways: (1) Exogenous shocks and (2) econometric techniques, such as an instrumental variables approach.[576]

The Commission disagrees with one commenter who felt that sufficient data existed to move forward with regulation prohibiting rebates because ''the theory is well-accepted, and no prior evidence contradicts it.'' [577] In the absence of causal data, regulators can use theory—and their best judgment based on their expertise—to guide their decision making. However, in this case, for the reasons discussed throughout this release, the Commission believes that empirically assessing the various theories, causal impacts, and effects of the transaction fee-and rebate pricing model is appropriate.

i. Battalio Equity Market Study

According to the Battalio Equity Market Study, broker-dealers appear to trade execution quality of customer orders, as measured by the likelihood of and time to execution (and not price), for the rebates obtained by providing liquidity to maker-taker venues.[578] By routing orders to exchanges that pay high rebates, broker-dealers may engage in rebate capture at the expense of client execution.[579] Using data obtained from mandatory Rule 606 disclosures over a two-month window,[580] the Battalio Equity Market Study also identified that four of the ten broker-dealers included in the analysis route limit orders exclusively to market makers or to exchanges that offered the largest liquidity rebates (and charged the highest access fees). A number of tests in the Battalio Equity Market Study also show that low-fee venues provide better execution quality for limit orders, as measured by the likelihood of an order fill, the speed of execution, and realized spreads, relative to high-fee venues, suggesting that order routing decisions to high rebate venues are likely to be suboptimal from a customer's perspective, and may be indicative of potential conflicts of interest.

Although the Battalio study provides evidence suggestive of conflicts of interest, the study has a number of limitations which render the Commission unable to use this study to robustly determine that rebates cause costly conflicts of interest for broker-dealers. First, the Battalio Equity Market Study uses order level data from a single broker-dealer to determine the relation between maker-taker fees and limit order execution quality.[581] Analysis based on observation of a single broker-dealer may not provide representative results because the relation between transaction-based fees and potential conflicts of interest may not be generalizable to other broker-dealers. For example, over 400 broker-dealers maintain membership with at least one U.S. equities exchange.[582] If the single broker-dealer examined in the Battalio Equity Market Study has significantly different order routing behavior than the average broker-dealer that routes orders to exchanges, the information obtained from examining the relation between transaction-based fees and order routing decisions of that broker-dealer would not be representative of the entire market and therefore would provide an incomplete representation of potential conflicts of interest.

The Battalio Equity Market Study also relies on a sample of Rule 606 order routing reports obtained directly from the reporting entities' websites from a limited sample of ten well-known national retail brokers from a single quarterly reporting cycle (October and

[572] *See* IEX Letter IV, at 9

[573] *See* AGF Letter, at 1

[574] *See* CBOE Letter I, at 5 See also Nasdaq Letter I, at II–12

[575] Over the last five years, the exchanges, on average, have made 34 revisions, or approximately 6.7 revisions per year, to their transaction-based fees and rebates. *See infra* Section IV.B.2.b.

[576] The method of instrumental variables is used to estimate causal relationships when controlled experiments or exogenous shocks are not feasible. An ''instrument'' changes the explanatory variable but has no independent effect on the dependent variable, allowing a researcher to uncover the causal effect of the explanatory variables on the dependent variable of interest.

[577] *See* Harris Letter, at 10.

[578] The Battalio Equity Market Study's abstract of the paper states: ''We identify retail brokers that seemingly route orders to maximize order flow payments by selling market orders and sending limit order to venues paying large liquidity rebates. . . . [W]e document a negative relation between limit order execution quality and rebate/fee level. This finding suggests that order routing designed to maximize liquidity rebates does not maximize limit order execution quality. . . .'' *See* Battalio Equity Market Study, *supra* note 5307, at 2193.

[579] *See* Battalio Equity Market Study, *supra* note 5307. *See also supra* Section IV.A.2, for an overview of the potential conflicts of interest that emerge.

[580] Rule 606 requires broker-dealers to provide quarterly reports that provide an overview of their routing practices. *See* Securities Exchange Act Release No. 51808 (November 27, 2000), 65 FR 75414, (December 1, 2000) (hereinafter ''Disclosure of Order Execution and Routing Practices''). *See also supra* note 310 and accompanying text and *infra* Section IV.B.1.b.i, ''Rule 606 Data.''

[581] The Battalio Equity Market Study, however, does not specify whether the limit orders are marketable or non-marketable limit orders, as Rule 606 disclosures do not segment these orders. *See* Battalio Equity Market Study, *supra* note 530.

[582] Estimates based on data from Form 1 of the X–17A–5 filings. As of December 31, 2017, 3,860 broker-dealers that filed form X–17A–5. *See infra* Section IV.B.2.a.

November 2012). As discussed above, approximately 400 broker-dealers are members of at least one national securities exchange. The ten retail brokers analyzed in the Battalio Equity Market Study make up approximately 2.1% of the broker-dealers with exchange memberships, and less than 0.3% of broker-dealers overall. Although these are well-known retail brokers, due to the lack of representativeness of the sample (*e.g.,* the majority of the broker-dealers represented in the Battalio Equity Market Study are online broker-dealers), these broker-dealers may be more (or less) likely than the average broker-dealer to route customer orders in ways that benefit themselves at the expense of their customers. The findings in the Battalio Equity Market Study, therefore, may not be representative of a broader sample of broker-dealers. Moreover, the Commission is unable to determine if the Battalio Equity Market Study's analyses of the Rule 606 disclosure data has statistical power because the authors did not provide any statistical analyses beyond the percentage of market or limit orders routed to a particular exchange.

In sum, the absence of an exogenous shock to access fee caps or rebates outside the control of exchanges leaves the authors unable to definitively determine the causes of broker-dealers' order routing decisions. Consequently, the authors are unable to disentangle whether fees and rebates drive broker-dealer order routing decisions or order routing decisions determine fees and rebates chosen by exchanges.

ii. The Nasdaq Experiment

Nasdaq independently conducted an experiment, whereby it lowered access fees and rebates for a sample of 14 stocks over a period of four months in 2015, providing an exogenous shock to the transaction-based pricing model on the exchange. The Nasdaq experiment lowered both the access fees charged and the liquidity rebates paid on the securities included in their study.[583] Nasdaq produced two reports on the experiment[584] and an academic study examining the experiment was submitted as a comment.[585] Both Nasdaq's first study report and the Swan study indicate that when Nasdaq lowered fees and rebates they lost market share in the stocks with lower fees and rebates. According to analysis in the Swan study, the market share that Nasdaq lost appeared to migrate to other make-take venues with higher fees and rebates. Additionally, both Nasdaq's analysis as well as the Swan study find that the experiment led to a decrease in the fraction of time that Nasdaq quoted at the NBBO. The Swan study also estimated a variety of additional tests to measure the impact of the experiment on various aspects of market quality. The results of these tests are mixed. The Swan study found that the Nasdaq experiment improved market quality on Nasdaq in terms of improved fill rates and fill times as well as narrower cum-fee effective spreads and cum-fee realized spreads.[586]

While cum-rebate effective spreads, fill rates and fill times improve on the Nasdaq during the experiment, the Swan study finds that the experiment diminished market quality in terms of quoted spreads and raw realized spreads which both increase during the experiment.[587] Additionally, the Swan study shows that some measures of market quality were unchanged by the Nasdaq experiment, namely, the Swan study finds no change in raw effective spread.[588] In Nasdaq's second report on the experiment they examine various market quality measures and find no impact on effective spread, relative effective spread, quoted spread, relative quoted spread, displayed dollar depth at the NBBO, time between quote updates on the consolidated tape, and time between price changes in the NBBO on the consolidated tape.

In examining the impact of the experiment on price efficiency, the Swan study finds mixed evidence that prices quoted on Nasdaq become less efficient during the experiment. First, the Swan study finds that global price impact declines during the experiment. Price impact is commonly employed as a measure of the informativeness of trades. The Swan study explains the decline in price impact with a theoretical model which suggests that rebates subsidize market makers for the adverse selection costs that they bear-thereby allowing them the ability to bear additional adverse selection which induces informed traders to trade more aggressively in the presence of rebates. Consequently, their model predicts that informed trades will congregate on exchanges with high rebates. Additionally, the Swan study finds using variance ratios that price efficiency declines on Nasdaq during the experiment. However when using autocorrelation of trades as a measure of price efficiency, the tests indicate a decrease in autocorrelation—suggesting more efficient stock prices on Nasdaq.[589] Additional analysis on price efficiency comes from Nasdaq's second report which explores the impact of their experiment on market wide price efficiency and finds no change in price impact, autocorrelation of trades, or variance ratios.

The Swan study also empirically examines how the Nasdaq experiment impacted the trading behavior of high frequency traders (''HFTs'') and non-HFTs and finds that as a result of the experiment HFTs added liquidity less often and took liquidity more often while non-HFTs did the opposite. Nasdaq also examined trading behavior and found that there was a shift in the composition of the top five liquidity providers for the securities that occurred as a result of the experiment. The top five liquidity providers prior to the start of the pilot significantly reduced their liquidity provision from 44.5% of the liquidity provided pre-pilot to 28.7% in the pilot period. However, the top five liquidity providers from the pilot period had a significant increase in their liquidity provision from 29.7% pre-pilot to 41.5% in the pilot period.

[583] The Nasdaq study lowered access fees to $0.0005 and rebates to $0.0004 simultaneously for a set of 14 securities, half of which identified Nasdaq as the primary listing exchange, the other half which identified the NYSE as the primary listing exchange. Nasdaq released two reports *see infra* note 584 (examining the changes to a number of metrics related to market quality).

[584] The first report provided by Nasdaq can be found on their webpage *http://qnasdaqomx.com/AccessFeeExperiment* (''Nasdaq's first report'', or the ''first Nasdaq report''). The second report provided by Nasdaq can be found at *http://people.stern.nyu.edu/jhasbrou/SternMicroMtg/SternMicroMtg2015/Supplemental/* (''Nasdaq's second report'', or the ''Second Nasdaq report'').

[585] *See* Swan Letter which submitted the paper: Yiping Lin, Peter Swan, & Frederick Harris, *Why Maker-Taker Fees Improve Exchange Quality: Theory and Natural Experiment Evidence,* Working Paper, (2018), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3034901* (hereinafter ''Swan study''); Nasdaq's Second Report, at 1.

[586] Cum fee indicates that the computation of spreads included the fee or rebate charged. It is a measure of the total cost of transacting.

[587] The effective spread is the cost to transact and is defined as two times the absolute difference between the price of a trade and the prevailing midpoint at the time of trade. The effective spread can be decomposed into two components, the realized spread and price impact of the trade. The price impact is generally viewed as the portion of the effective spread that compensates market makers for adverse selection losses. The realized spread is the portion of the spread that market makers 'realize' after adverse selection costs are taken into account. Raw *realized* spreads are *realized* spreads that do not take into account the all-in cost of trading, *i.e.,* they exclude *rebates* from the calculations

[588] Raw *effective* spreads are *effective* spreads that do not take into account the all-in cost of trading, *i.e.,* they exclude *fees* from the calculations.

[589] The interpretation of the price efficiency results is difficult because it is unclear what price efficiency on one exchange means in the absence of the other exchanges. Usually price efficiency is measured across all exchanges trading a given security.

While Nasdaq believes that the results from their study do not support the need for a pilot,[590] the Commission disagrees because the Nasdaq experiment and the subsequent analysis suffers from the following limitations. First, the Nasdaq experiment may not be representative of the broader market. Nasdaq selected 14 stocks to be part of the analysis, which represent 0.3% of all NMS stocks. The sample is unlikely to be representative of the universe of NMS securities for two reasons: (1) The sample included a small number of stocks (and no ETPs),[591] and (2) less than one-third of these stocks were small or mid-capitalization at the time of the analysis, although most had market capitalizations close to $3 billion immediately prior to the study.[592] The small number of stocks makes interpretation of the results more difficult because a change to such a small number of stocks may not be significant enough for traders to alter their behavior.[593]

Additionally, the Commission is not able to make inference about the effect of a market wide change to fees and or rebates from the Nasdaq experiment because, as noted by multiple commenters, the effects of the experiment apply to a single exchange: Nasdaq.[594] As the other equities exchanges did not have similar changes to transaction-based fees and rebates, any inferences drawn from the Nasdaq study may not be valid under different circumstances in which all equities exchanges were subject to consistent revisions to transaction-based fees. [595]

Lastly, none of the analysis of the Nasdaq study analyzes the impact of potential conflicts of interest on order routing decisions. Further, even if the Nasdaq study had analyzed a causal relationship between transaction-based fees and rebates and potential conflicts of interest, the limited representativeness of the Nasdaq sample would limit the generality of the study.

iii. Options Market Studies

Three studies have examined exogenous shifts between maker-taker and payment for order flow pricing models on U.S. options exchanges.[596] These studies found that the movement from a payment for order flow model to a maker-taker model led to a decrease in execution costs for option classes affected by the shift, improved quoted spreads, and altered broker-dealer order routing behavior to account for the fees.[597] However, the change to a payment for order flow model from a maker-taker model yielded better execution quality, but a reduction in the number of orders and order volume.[598] With respect to the transition between forms of pricing models that occurred on the option exchanges, discussed above, the key limitation is the comparison of maker-taker pricing models with payment for order flow pricing models. For example, studies that explore these regime shifts between maker-taker to payment for order flow models are not comparing situations in which one regime could theoretically have lower conflicts of interest than the other. Each of these models is likely to create potential conflicts of interest that could affect how broker-dealers route their customer orders,[599] although evidence does not suggest that one form of pricing model is more or less prone to conflicts than another. Moreover, the change from one form of pricing model to another could introduce new conflicts of interest or impacts on market and execution quality that did not previously exist. Therefore, the Commission believes that exchange-driven transitions between maker-taker and payment for order flow pricing models are not likely to provide information about potential conflicts of interest and impacts on market and execution quality driven by the maker-taker and taker-maker models or to inform the Commission about future regulatory decisions regarding transaction-based fee models. Additionally, these studies lack causality. Specifically the decision to invert an exchange from a taker/maker to a maker/taker exchange, which these studies are based on, is an endogenous decision, and therefore these studies lack the ability to make causal inference further hindering the Commission's ability to draw inference from these studies.

b. Limitations of Existing and Anticipated Data

Some Commenters suggested that existing data sources could be employed in lieu of a Pilot to study the Commissions objectives.[600] Another Commenter argued that enhancing existing data would be sufficient.[601] To this end, the Commission considered whether a number of existing data sources could be used independently or in combination to relate transaction-based fees to order routing and execution quality. This section discusses these data sources. For instance, in the Battalio Equity Market Study and the Nasdaq study discussed above, the authors employed some combination of Rule 606 data, proprietary broker-dealer data, the Trade and Quote (TAQ) database,[602] and proprietary exchange data. In addition, while not employed in previous studies, CAT data, OATS data, Rule 605 data, Form ATS–N data, and exchanges' Form 19b–4 fee filings and fee schedules available from each exchange's website, could provide insights into the relation between transaction-based fees, order routing, and execution quality, and fees

[590] *See* Nasdaq Letter I, at 10.

[591] Only common stocks were included in the Nasdaq study, while the proposed Pilot will include NMS stocks, which includes common stocks as well as ETPs.

[592] Market capitalizations are computed from CRSP shares outstanding and stock price, as of December 31, 2014. See also Themis Trading Letter I, at 2; NorthWestern Letter, at 1 and IEX Letter III, at 6.

[593] Nasdaq acknowledges this limitation in their second report analyzing the experiment. *See supra* note 584 *See also* Themis Trading Letter I, at 2 and IEX Letter III, at 6 for commenters expressing similar concerns about the representativeness of Nasdaq's sample.

[594] See Swan Letter, at 3; Themis Trading Letter I, at 2; Credit Suisse Commentary, at 2, Larry Harris Letter, at 9, and IEX Letter III, at 6.

[595] This point was acknowledged in Nasdaq's second report. S*ee supra* note 584. This point was also brought up by multiple commenters. *See* Swan Letter, at 3; Credit Suisse Commentary, at 2; and Larry Harris Letter, at 9.

[596] *See* Amber Anand, Jian Hua, & Tim McCormick, *Make-Take Structure and Market Quality: Evidence from the U.S. Options Markets,* 62 Mgmt. Sci. 3085, 3217–90 (2016), *https://pubsonline.informs.org/doi/abs/10.1287/mnsc.2015.2274* (hereinafter ''Anand, Hua, & McCormick''); Robert Battalio, Todd Griffith, & Robert Van Ness, *Make-Take Fees versus Order Flow Inducements: Evidence from the NASDAQ OMX PHLX Exchange,* 12th Ann. Mid-Atlantic Res. Conf. in Fin. (2017), *http://www1.villanova.edu/content/dam/villanova/VSB/assets/marc/marc2017/SSRN-id2870000.pdf* (hereinafter ''Battalio, Griffith, and Van Ness''); Robert Battalio, Andriy Shkilko, & Robert Van Ness, *To Pay or Be Paid? The Impact of Taker Fees and Order Flow Inducements on Trading Costs in U.S. Options Markets,* 51 J. Fin. & Quantitative Analysis (Oct. 2016) 1637, 1637–62 *https://www.cambridge.org/core/journals/journal-of-financial-and-quantitative-analysis/article/div-classtitleto-pay-or-be-paid-the-impact-of-taker-fees-and-order-flow-inducements-on-trading-costs-in-us-options-marketsdiv/0782CE3E9679C29BB910A66192D27201* (hereinafter ''Battalio, Shkilko & Van Ness''). Anand, Hua, & McCormick explores the transition from a payment for order flow model to a maker-taker model on NYSE ARCA, while Battalio, Griffith, and Van Ness as well as Battalio, Shkilko, & Van Ness examine the shift on NASDAQ OMX PHLX (''PHLX'') from a maker-taker model to a payment for order flow model.

[597] *Id.*

[598] *Id.*

[599] *See* Battalio, Shkilko & Van Ness, *supra* note 596, at 1637–62.

[600] *See* STANY Letter, at 2; Nasdaq Letter I, at 11–12; NYSE Letter I, at 17; and Nasdaq Letter III, at 1–2.

[601] *See* Era Letter, at 1. *But cf.* IEX Letter II, at 9.

[602] Battalio Equity Market Study, *supra* note 530, relies on Rule 606 disclosures to identify order routing for a small sample of broker-dealers, proprietary broker-dealer data from a single smart-order routing system to capture limit order execution quality for this broker-dealer's orders, and the TAQ data to measure execution quality as a function of each venue's taker fee or rebate.

and other arrangements. As noted above, several data sources provide information on order routing and execution quality. While researchers could use these data sources to produce some representative results regarding the relation between transaction-based fees, order routing, and execution quality, the Commission believes that available data has several limitations, which include: Granularity, completeness, periodicity, format, and availability.

i. Rule 606 Data

Rule 606 requires broker-dealers to make publicly available quarterly reports that provide an overview of their routing practices on certain orders in NMS securities. As amended, broker-dealers must provide information for the ten venues to which the largest number of total non-directed orders were routed for execution and for any venue to which five percent or more of non-directed orders were routed for execution. Rule 606 disclosures also require broker-dealers to disclose in a standardized format material aspects of their relationships with trading venues to which they route orders, including a description of, among other things, the payment for order flow and any profit sharing relationships, which, like rebates, could influence the broker-dealer's order routing decision and potentially lead to potential conflicts of interest for broker-dealers when routing orders.[603] Researchers and other analysts interested in order routing data can download these forms quarterly directly from broker-dealer websites.

Some commenters believed that the amendments to the Rule 606 data would render the Pilot unnecessary.[604] Indeed, a few commenters suggested that Rule 606 data, perhaps combined with other existing data, would be sufficient to study conflicts of interest among broker-dealers.[605] The Commission disagrees that this type of analysis would serve the purposes of the Pilot.[606] Such an approach would not adequately advance the Pilot's broader purpose to study the effects that exchange transaction fee-and-rebate pricing models may have on order routing behavior, execution quality, and market quality, in addition to conflicts of interest between brokers and their customers that are presented when exchanges pay rebates.[607] Further, disclosure alone would not provide an exogenous shock that generates measurable responses capable of providing insight into the effects of fees and rebates on the markets and market participant behavior.

In addition, the quarterly frequency of the public Rule 606 reports by broker-dealers is different from the frequency of changes in fee schedules by exchanges (*e.g.,* as presented in Table 2, over a recent five-year measurement period, the average exchange updated its fees schedule approximately 6.7 times per year).[608] Further, while the Rule 606 data provides order routing at the broker-dealer level, such information is not granular enough to thoroughly study potential conflicts of interest. Specifically, the 606 data is aggregated at the quarterly level. This frequency will not enable researchers to look at the full picture of how a broker-dealer responds to fees because exchanges on average revise their fee schedules 6.7 times per year. With 13 exchanges this amounts to 87 fee changes per year. Consequently, the fees that exchanges charge in a given quarter relative to the other exchanges will likely change multiple times within a quarter. Consequently, Rule 606 data is limited in how it can be employed to evaluate comprehensively the impact of order flow responding to fees and rebates.

The value of Rule 606 disclosures for identifying possible conflicts of interest resulting from transaction-based fees would be limited for a number of additional reasons. First, each broker-dealer discloses data for only its top ten order routing venues. Second, because broker-dealers disclose data at a quarterly frequency, a five-year sample of Rule 606 data for a single broker-dealer, would include only 20 observations, limiting statistical power.

In sum, the Commission believes that the amended Rule 606 data will provide useful information to complement the Pilot; however it is insufficient by itself to determine the impact of exchange transaction fees and rebates on broker-dealer order routing decisions, or inform the Commission of the impact of exchange pricing on market and execution quality.[609]

ii. CAT Data and OATS Data

Once the CAT Phase 1 becomes operational,[610] the Commission and SROs will have information on all exchange routing and exchange executions for all NMS securities. In CAT Phase 1, exchanges would record and report order events on every order they receive for NMS securities. Order events include order receipt, order routes, order modifications, order cancellations, and order executions. Likewise, the Order Audit Trail Systems (OATS) data could inform on order routing decisions.[611] The OATS data tracks customer orders from the receipt of the order through execution or cancellation. Information in the OATS data reflects the terms of the order, including the security, price, shares, account type, handling instructions, and side of the market for which the order was placed; where the order was routed for execution; modifications to the order; and execution information, including the capacity in which the firm acted in the trade.

Although the CAT and OATS data could feasibly be used to produce order routing data similar to that required by the Pilot, as indicated by one commenter, without the corresponding ''randomized trial,'' the use of OATS data alone would be insufficient to determine causality in the effect of fees and rebates on order routing decisions because it would not be possible to determine from the data whether fees respond to changes in order routing decisions or whether order routing decisions respond to changes in fees. Consequently, in the absence of an exogenous shock to fees, CAT and OATS data cannot provide the Commission with robust evidence about how access fees impact order routing decisions.[612]

iii. Proprietary Broker-Dealer Data

Proprietary data from broker-dealers or exchanges could also provide information about order routing decisions. Broker-dealer data include information on the orders received and routed by that broker-dealer, including where the broker-dealer routed orders, whether the orders execute, and the price, size, and time of execution. Exchange data include information on the orders received by an exchange, including which members routed orders to the exchange, whether the orders execute, and the price, size, and time of

[603] *See* Section III.B.3 of Amendments to Order Handling Disclosure, supra note 310.

[604] *See* Cboe letter I, at 26; FIA Letter, at 3; STANY Letter, at 2; Nasdaq Letter I, at 1–2, 4; NYSE Letter I, at 18.

[605] *See* STANY Letter, at 2; Nasdaq Letter I, at 11–12; ERA Letter, at 1.

[606] *See also* IEX Letter I, at 9.

[607] *See, e.g.,* ICI Letter II at 3.

[608] Not every fee schedule revision pertains to transaction fees or rebates. To focus only on these revisions, each Form 19b–4 fee filing was evaluated to determine that revisions to fees or rebates were pertinent to this baseline.

[609] Multiple commenters expressed views similar to this and urged the Commission to adopt 606 amendments prior to the adoption of the Pilot. *See, e.g.,* Citadel Letter, at 3; OMERS Letter, at 3; ICI Letter I, at 5–6; Fidelity Letter, at 2; IEX Letter II, at 9.

[610] *See supra* Section II.E.3.vi.

[611] *See* Nasdaq Letter I, at 4.

[612] *See* Verret Letter I, at 4.

execution. Indeed, several commenters stated that if 606 data were not sufficient to answer the Commission's questions about broker dealer routing decisions, then the Commission could request routing tables and information directly from broker-dealers or request other Transaction Cost Analysis (TCA) data to supplement the 606 data.[613]

While these data would provide potentially more granular data about order routing, as proprietary datasets, there is no standard format that exchanges or broker-dealers use to aggregate this data, which makes cross broker-dealer or cross exchange comparison difficult. Even if a dataset of proprietary data could be produced from data obtained directly from exchanges or broker-dealers, the data would still lack an exogenous shock to fees which is necessary to determine a causal link between order routing decisions and exchange fees.

iv. Rule 605 Data

A few commenters suggested that Rule 605 data used in conjunction with other data such as Rule 606 data, could provide information about broker dealer conflicts of interest.[614] Rule 605 data provides information about execution quality by market center, including exchanges, ATSs, and broker-dealers that execute orders, by requiring standardized reports of statistical information regarding order execution, and was designed to improve the public disclosure of order execution practices by exchanges.[615] These data are available monthly from market center websites or data vendors, and provide information on execution quality statistics such as transaction costs, execution speed, and fill rates reported separately for marketable and non-marketable orders.

While Rule 605 data is available to researchers and may provide information about execution quality, it too has a number of limitations. For example, Rule 605 data provides execution quality information for both marketable and non-marketable orders; however, the methodologies for estimating measures of the speed of execution of non-marketable orders are outdated.[616] For instance, Rule 605 measures realized spreads based on quotations five minutes after the time of order execution and recent research suggests using quotations that more closely follow a trade, because any temporary price impact of a trade goes away within seconds, not minutes, of the trade.[617] Finally, Rule 605 data is limited in that it covers only held orders and orders of less than 10,000 shares.

v. TAQ Data

Beyond Rule 605 data, researchers could also use the TAQ database as a means of measuring order execution quality or estimating market share to use as a measure for order routing decisions. The TAQ database is publicly available (for a fee) from NYSE and provides access to all trades and top of the book quotes for NMS securities, from which researchers and other analysts can estimate trade-based measures of execution quality such as effective spreads.

While TAQ data are available to academic researchers, TAQ has a number of limitations in its precision in the measurement of order routing and execution quality. An exchange's market share can differ significantly from its share of orders received because exchanges reroute orders they cannot execute at the best prices and some exchanges reroute more orders than others. In addition, TAQ doesn't provide information on the brokers or dealers underlying the trades or quotes, so TAQ cannot tell us about the decisions of individual brokers. While TAQ facilitates the estimation of trade and quote-based measures of execution and market quality, it does not facilitate the estimation of order-based measures of execution quality, which are more precise than trade-based measures. In particular, order-based measures allow for the consideration of order size, which can be different and often larger than trade size. Order-based measures also consider the costs of latency whereas trade-based measures do not. Additionally, since TAQ only provides data on trades it does not provide a means of estimating execution quality for limit orders.

vi. Information From Exchange 19b–4 Filings

Finally, researchers both in and outside of the Commission, who wish to link fees and rebates to various outcomes, can manually create datasets of exchange fees and rebates from the information that exchanges provide on their websites and release in their Notice of Filing of Proposed Rule Changes, which would capture information contained in exchanges' Form 19b–4 fee filings. The Form 19b–4 fee filings record changes to the existing exchange fee schedules with the Commission. At any point that an exchange chooses to make a change to any aspect of its fees and rebates, the exchange must provide notice to the Commission that it is filing a proposed rule change to amend its existing fee and rebate schedule. Exchanges may file their revisions to fees and rebates for immediate effectiveness upon submitting the Form 19b–4 fee filings with the Commission.

A key limitation to this data, particularly for researchers outside the Commission, is that exchanges use bespoke terminology to classify their fees and rebates. Consequently, identifying comparable fees across exchanges is difficult. For example, identifying the base or top-tier fees across exchanges could be difficult for researchers. As shown in Table 2 below, the average exchange has 24 different access fee categories and 21 different rebate categories. Further, exchanges do not disclose per share average or median fees charged and rebates earned on any report or filing, so such information is unavailable to the public. To add to the impediments to fee data aggregation and comparison, Form 19b–4 fee filings are available only as PDF files downloadable from the Commission's website, thereby increasing the costs of aggregation across exchanges over time by researchers.

Lastly, even if a comprehensive dataset of fee changes were created, it would not be sufficient by itself to study the link between order routing decisions and fees because the dataset can only tell when and how an exchange revised fees, and not why the fee changed or if the fee change affected order routing behavior. In essence the data still lacks the ability to establish a causal connection between fee changes and order routing decisions.

vii. Form ATS–N

Following implementation in January 2019, the public will have more information on ATS conflicts of interest and fees. In particular, in June 2018, the Commission adopted amendments to 17 CFR 242.300 through 242.303 (Regulation ATS) and 17 CFR 240.3a1–1 (Rule 3a1–1 under the Exchange Act).[618] As part of these amendments, NMS Stock ATSs will be required to

[613] *See* Nasdaq Letter I, at 11–12 and FIA Letter, at 3.

[614] *See* STANY Letter, at 2 and Nasdaq Letter I, at 11–12.

[615] *See* Disclosure of Order Execution and Routing Practices, *supra* note 580, at 75417–25.

[616] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (hereinafter ''Concept Release'').

[617] *See, e.g.,* Jennifer Conrad & Sunil Wahal, The Term Structure of Liquidity Provision (August 8, 2018) (unpublished manuscript) *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2837111.*

[618] *See* Securities Exchange Act Release Nos. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018).

publicly report on new Form ATS–N information about the manner in which the ATS operates and activities of the broker-dealer operator and its affiliates, as well as potential conflicts of interest within the NMS Stock ATSs. While Form ATS–N will contain high level information on operations and affiliates of the ATS, it will not contain detailed information, such as ATS routing tables. Therefore, it would not contain detailed information on how fees and rebates affect the order routing decisions of the ATS.

Form ATS–N also will require ATSs to provide public disclosures about the different types of fees they charge, along with the ranges of those fees and whether they are bundled with any other services. However this information would not be nearly as granular as the exact fee disclosures that would be required by the Pilot. Nor do they provide as much information as the fee disclosures that exchanges are currently required to disclose. These limitations make it difficult to use the ATS–N data to make causal inference about the impact of fees and rebates on order routing decisions.

c. The Potential To Study the Causal Link Between Fees, Rebates, and Conflicts of Interest Absent a Pilot

Absent a Pilot, the Commission does not believe it would have comprehensive, empirical evidence to study the effects on the market that the Pilot is intended to study. In particular, as indicated above, the Commission does not believe the theoretical evidence on incentives and potential other effects are indicative of broker-dealers actually acting on those incentives. Further, even if the data sources above did not suffer from their limitations, researchers would struggle to identify the causality necessary to robustly link fee and rebate effects on order routing to order execution quality.

Indeed, this link requires two steps: First establishing a causal link between fees and rebates and order routing and then between fee-based order routing and order execution quality. Even with perfect data, any study linking fees and rebates to order routing would suffer from an inability to draw conclusions about causality. While such a study might find a correlation between fees/rebates and order routing decisions, the researchers would be unable to conclude which event was driving which. In particular, since exchanges compete for market share, it is reasonable to expect that exchanges change their fees and rebates in response to changes in order routing decisions by broker dealers. If this is the case it would be the order routing decisions that drive the exchange fees. The data alone do not allow researchers to distinguish whether order routing determines fees or whether fees determine order routing.

Similarly, existing data, even if it didn't have the limitations above, would not enable researchers to infer the causal impact of fee-based order routing on order execution quality. If fees and execution quality are linked, then exchanges may change their fees in response to changes in execution quality. For example, raising rebates might attract more liquidity providers and induce additional order flow to the exchange. An exchange that is experiencing low execution quality might raise rebates to address this problem. Under these circumstances, an empirical analysis that lacks an exogenous shock to fees/rebates might erroneously conclude that increased rebates cause a conflict of interest because they are correlated with low execution quality and increased order flow. Such a conclusion might lead the Commission to draw incorrect conclusions.

2. Current Market Environment

This section provides an overview of the competitive landscape that could be affected as a result of revisions to the transaction-based fee structure required by the Pilot. Where information is currently available to the Commission, a description of the current practices of exchanges along dimensions that are relevant to the Pilot (*e.g.,* summary information on their current fee schedule or the frequency of fee revisions) are included. The Commission requested that commenters provide additional information to inform the baseline as part of the proposal. Where available, the baseline has been supplemented to reflect additional baseline information that was received from commenters.

a. Market for Trading Services

The market for trading services, which is served by exchanges, ATSs, and other liquidity providers (internalizers and others), relies on competition to supply investors with execution services at efficient prices. These trading venues, which compete to match traders with counterparties, provide platforms for price negotiation and the dissemination of trading information. The market for trading services in NMS stocks currently consists of 13 national equity market exchanges and 34 operational ATSs. Other off-exchange venues include broker-dealer internalizers and wholesalers, which execute a substantial volume of retail order flow. The remainder of this section discusses the current competitive landscape for exchanges, ATSs, and others relevant to our economic analysis of the Pilot.

Since the adoption of Regulation NMS in 2005, the market for trading services has become more fragmented and competitive. Of the 13 exchanges, seven are maker-taker exchanges and four are taker-maker pricing exchanges, as shown in Table 1; the NYSE American and IEX operate as flat-fee exchanges.[619] Since Regulation NMS was adopted in 2005, the market for trading services has become significantly more competitive as measured by the decline in market share of individual exchanges, discussed in more detail below. The number of U.S. equities exchanges has increased by over 60%, as the number of exchanges increased from eight exchanges in 2005 to 13 exchanges operating today.[620] Several studies have suggested that transaction-based fee pricing partially drove the increase in the number of U.S. equities exchanges since 2005.[621]

Execution services are a lucrative business, which encourages new trading centers to enter the market in the hopes of capturing rents associated with order

[619] IEX charges a flat fee of $0.0009 for trades against non-displayed liquidity on both sides of the market, and charges $0.0003 for trade execution against displayed liquidity. *See* IEX, Investors Exchange Fee Schedule (August 1, 2018), *https://iextrading.com/trading/fees* (last visited September 18, 2018). As of March 2018, EDGA is no longer operating as a taker-maker market, but is also operating as a flat-fee venue. *See* Cboe, Cboe US Equities (2018) *http://markets.cboe.com/us/equities/* (last visited September 18, 2018).

[620] While the number of exchanges was eight, there were other non-exchange trading venues in 2005 (*i.e.,* ECNs), which were displayed markets that utilized a standard price-time-priority market model similar to exchanges. Although 13 U.S. equities exchanges currently operate as of March 2018, the majority of these exchanges are part of exchange families. For instance, NYSE, NYSE Arca, NYSE American, and NYSE National, are all part of the NYSE Group, which is wholly owned by the Intercontinental Exchange (ICE), while Nasdaq, Phlx, and BX, are owned by Nasdaq. BATS, BATS–Y, EDGA, and EDGX, which all operated as ATSs in 2005, are all subsidiaries of Cboe Global Market, Inc. IEX became a registered exchange in 2016. Further, NSX (NYSE National) existed as an exchange in 2005, but halted operations in 2016. It was acquired by NYSE/ICE in January 2017 and was re-opened for trading in May 2018. *See* Intercontinental Exchange, *NYSE Finalizes Acquisition of National Stock Exchange,* Bus. Wire: News (Jan. 31, 2017, 6:28 p.m.) *https://www.businesswire.com/news/home/20170131006474/en/*. Researchers can adequately control for exchanges that are subsidiaries of the same parent when conducting analyses of the effect of changes in transaction-based fees on order routes.

[621] *See, e.g.,* Angel, Harris, & Spatt, *supra* note 530; Harris, *supra* note 530.

execution.[622] As discussed in the proposing release, liquidity externalities, where the more liquid venues attract more interest and therefore more liquidity, could result in a single venue (or very limited number of venues) being the preferred trading location for any given stock because all traders could optimally route orders to the venue with the highest liquidity for a given stock.[623] But if rebates offered by exchanges are large enough, they provide incentives for market participants to route orders to those venues, in order to capture the rebates, and possibly despite the liquidity profile or execution quality of those venues. Rebates offered by exchanges, therefore, may ''break'' the liquidity externality.

TABLE 1—U.S. NATIONAL EQUITIES EXCHANGES

Exchange	Market fee type[624]	Exchange in 2005?	Market share[625] (%)
Cboe BZX: *https://markets.cboe.com*	Maker-Taker		6.14
Cboe BYX: *https://markets.cboe.com*	Taker-Maker		4.86
Cboe EDGA: *https://markets.cboe.com*	Taker-Maker		1.26
Cboe EDGX: *https://markets.cboe.com*	Maker-Taker		5.58
BX: *www.nasdaqtrader.com*	Taker-Maker	✓	3.00
Phlx (PSX): *www.nasdaqtrader.com*	Maker-Taker	✓	0.70
Nasdaq: *www.nasdaqtrader.com*	Maker-Taker	✓	15.76
NYSE Arca: *https://www.nyse.com/markets*	Maker-Taker	✓	8.87
NYSE American[626]: *https://www.nyse.com/markets*	Flat Fee	✓	0.32
NYSE: *https://www.nyse.com/markets*	Maker-Taker	✓	12.16
NYSE National[627]: *https://www.nyse.com/markets*	Taker-Maker	✓	0.64
CHX: *www.chx.com*	Maker-Taker	✓	0.57
IEX: *www.iextrading.com*	Flat-fee		6.14
Total			66.00

Table 1 highlights that the market share of trading volume among exchanges is not very concentrated. Although NYSE and Nasdaq have the largest market share of approximately 12% and 16%, respectively, among the exchanges, as of July 2018, these two exchanges collectively account for less than 30% of the total market share of trading volume for NMS stocks, indicating that the market for trading services has become decentralized, and has become more so over time. For instance, between 2004 and 2013, the NYSE's market share of NYSE-listed stocks declined from approximately 80% to 20%, while market share of other exchanges and off-exchange trading centers has increased.[628] This decentralization provides market participants with a choice among venues when they route orders, and may also encourage exchanges to compete to attract order flow.

A number of commenters suggested that exchanges compete intensely with each other to attract order flow.[629] Transaction-based fees represent one means by which national securities exchanges may compete for order flow, and exchanges may adopt business models that focus on attracting order flow by offering large rebates or charging competitive fees. Exchanges may also develop different business models to attract different types of order flow.[630] For example, maker-taker venues may offer large rebates to attract liquidity supplying orders.[631] They may then rely on this liquidity to attract marketable orders, to which they charge a high transaction fee in order to both offset the cost of the large rebates and to ensure a profitable transaction pricing model. Alternatively, inverted exchanges offer higher rebates to compete to attract marketable orders. Exchanges may also compete for order flow on other dimensions as well, by offering better execution quality, better technology, and innovations in order types and other trading mechanisms.[632]

In addition to competing with other U.S. equities exchanges, exchanges also compete for order flow with off-exchange trading centers, including ATSs, internalizers, and others. One way exchanges compete with off-exchange trading venues is through the use of rebates. For example, a number

[622] *See, e.g.,* Angel, Harris, & Spatt, *supra* note 530; Harris, *supra* note 530.

[623] *See* Proposing Release, *supra* note 2, at 13042. *See also* ICI Letter II at 4.

[624] *See supra* notes 3 and 4.

[625] Shares are computed based on trading volume in August 2018. Market shares for the exchanges reported do not add up to 100%, because approximately 34% of trading volume is executed off-exchange on over-the-counter venues. These market share figures differ slightly from the ones in footnote 9 of Cboe Letter I, which provided market share for May 2018. While these differences could result from the focus on more recent data, the Commission is not sure if the differences could also be driven by differing methodologies. Nonetheless, the figures in Cboe Letter I are consistent with the conclusions in this release. Also, the off-exchange share differs slightly from the 39% share in Nasdaq Letter I, at 2. Note that the off-exchange share in the Proposing Release was 40%.

[626] Since July 2017, NYSE American has not been a purely maker-taker market as only certain types of market participants (electronic Designated Market Makers) are eligible for rebates. *See* NYSE American Equities Price List (July 26, 2018), *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.*

[627] NYSE acquired NSX in January 2017, and the exchange is now known as NYSE National. The exchange was re-opened for trading in May 2018 as taker-maker exchange.

[628] *See* Angel, Harris, & Spatt, *supra* note 5307, Figures 2.17 and 2.18. Although less evident than for NYSE-listed securities, the effect is similar for the Nasdaq market.

[629] *See, e.g.,* CBOE Letter I, at 2; NASDAQ Letter I, at 11–13. One commenter suggested that in the Proposal, the Commission made the assumption that exchange groups had market power without providing evidence to support the assumption. This commenter also argued that no exchange group controls even 25 percent of market share and that competition is robust between and among equities exchanges. *See* NASDAQ Letter I, at 12–13.

[630] One commenter suggested that in the Proposal, the Commission failed to account for the two-sided nature of exchange platforms when assessing the competitive impact of the Proposal. *See* NASDAQ Letter II, at 4–5. In the Proposal, the Commission separately discussed the potential impact of the Pilot on the competition for trading volume, *see* the Proposal, *supra* note 2, at 13068. The Commission also discussed some ways the Pilot could potentially impact marketable and nonmarketable order flow, *see* the Proposal, *supra* note 2, at 13057. Additionally, in Section IV.D.2.a, the Commission separately discusses the potential effects of the Pilot on marketable and non-marketable order flow.

[631] A number of commenters said exchanges use rebates to compete to attract limit orders to supply liquidity. *See, e.g.* NASDAQ Letter I, at 12; Virtu Letter, at 3; State Street Letter, at 2.

[632] One commenter also suggested that exchanges also compete to attract to liquidity using many costly features, including rebates, incentive programs, superior execution systems, regulatory quality, and customer service. *See* NASDAQ Letter I, at 12.

of commenters argued that one way exchanges compete with off-exchange trading venues is by using liquidity rebates to attract liquidity and narrow the displayed spread, which makes it more expensive for off-exchange trading venues to either match or improve upon the NBBO.[633] Exchange transaction fees may also affect competition between exchanges and off-exchange trading venues. For example, commenters suggested that broker-dealers may opt to route order flow off-exchange in order to avoid higher transaction fees charged by exchanges.[634] Off-exchange trading venues may also compete with exchanges to attract order flow by offering more flexibility in how they execute orders. One commenter noted that ''market participants choose to send orders to off-exchange venues for reasons other than avoiding fees,'' including ''investors anonymity, the ability to trade in more granular tick sizes, the flexibility to segment the treatment of different types of clients, the ability to choose trading counterparties, and the ability to accommodate customer errors.'' [635]

Off-exchange trading makes up a substantial fraction of total volume, as approximately 34% of all transaction reports are routed using the NYSE and Nasdaq Trade Reporting Facilities as of August 2018.[636] Of that off-exchange NMS share volume, approximately 14% was attributable to ATSs, of which 34 traded NMS securities as of August 2018.[637] The remaining 21% of off-exchange share volume is routed to other off-exchange trading centers, such as internalizers.[638]

In aggregate, broker-dealers and other market participants have a large and varied set of options as to where they route orders, whether to exchanges or to off-exchange trading centers. Moreover, empirical evidence suggests that traditional exchanges, such as NYSE and Nasdaq, are losing market share to off-exchange trading centers and newer exchanges,[639] which may provide different incentives to broker-dealers in order to attract this order flow, including transaction fees and rebates. We discuss the current levels of transaction-based fees in Section IV.B.2.e below.

b. Market for Liquidity Provision

Several commenters discussed the importance of liquidity providers to an exchange's ability to compete in the market for trading services.[640] Within the exchange framework, liquidity providers, such as market makers, other proprietary traders, and investors, compete to supply liquidity to liquidity demanders. They compete by posting displayed limit orders on exchanges, or by posting undisplayed limit orders on exchanges or ATSs. Liquidity providers profit by buying at a price lower than the price at which they sell and/or by collecting rebates that are greater than the fees they pay. Hence, an execution is a necessary means of profiting from liquidity provision, whether the liquidity provider seeks to profit from price changes or rebates.

Liquidity providers, and traders more generally, seek to manage their trading profits by managing the tradeoff between the price they get in an execution, the certainty of execution, and any adverse selection resulting from the execution.[641] When a liquidity supplier more aggressively prices their limit order, they increase the chance that their order will execute, but they trade this off against their order executing at a worse price and increased chance of their order being adversely selected if it does execute.

To get an execution, the limit orders need to be at the top of a queue at a given price and venue and placed on a venue able to attract liquidity demanders. Displaying a limit order attracts liquidity demanders to the venue displaying the limit order, and thus improves the probability of execution, but could also increase the risk of being adversely selected, which reduces profits. For example, an algorithm that is skilled at identifying short-term price movements may be programmed to hit displayed limit buy orders at a price following a signal that the price is about to go down. In such a situation, the liquidity provider is unlikely to quickly sell at a price higher than the recent purchase, and therefore, these situations are costly for the liquidity provider. One way to attempt to reduce adverse selection costs is to not display the limit order. When the order is not displayed, the traders with the price signals may not see it and, as a result, would be less likely to pick it off. On the other hand, an undisplayed limit order also risks not getting executed when an execution would be profitable. For example, an undisplayed limit buy order is less likely to execute than a displayed limit buy order just prior to an increase in the price because marketable sell orders that do not anticipate the price increase are likely to route to venues with competitively priced limit buy orders and would not be able to identify which venues have undisplayed limit buy orders.

Rebates and fees can also affect where liquidity providers choose to supply liquidity. Maker-taker exchanges, which pay rebates to liquidity suppliers, provide them with extra revenue when trades are executed. This could encourage liquidity suppliers to post at more aggressive prices for some securities, subject to the fact that displayed quotes on stock exchanges must be priced in one-cent increments. However, competition among liquidity suppliers to earn rebates could lead to longer queues in an order book, which could decrease the chance that a liquidity supplier's order executes unless they are at or near the front of the queue. In contrast, inverted exchanges, which charge liquidity suppliers a fee when they supply liquidity and offer a rebate to takers of liquidity, usually have shorter queue lengths and an economic incentive to take liquidity, which increases the chance that a liquidity supplier's order executes.

c. Market for Broker-Dealer Services

The Commission considered the potential for the Pilot to affect competition among broker-dealers that route institutional and retail orders. These broker-dealers compete in a segment of the market for broker-dealer services. The market for broker-dealer services is highly competitive, with most business concentrated among a small set of large broker-dealers and thousands of small broker-dealers competing in niche or regional segments of the market.[642] Large broker-dealers

[633] *See e.g.,* FIA Letter, at 3–4; NYSE Letter I, at 6; Grasso Letter, at 4.

[634] *See e.g.,* IEX Letter I, at 3; Credit Suisse Commentary, at 2.

[635] *See* NYSE Letter I, at 6.

[636] Data on off-exchange market share are available from Cboe *http://markets.cboe.com/us/equities/market_share/* (last visited November 8, 2018).

[637] The estimates of ATSs that trade NMS stocks and ATS trade volume share was developed using weekly summaries of trade volume collected from ATSs pursuant to FINRA Rule 4552. *See also* Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80998, 81109 (December 28, 2015) (hereinafter ''Regulation of NMS Stock Alternative Trading Systems''). The estimates in this release were calculated in the same manner as in the cited release. *See also OTC (ATS & Non-ATS) Transparency,* FINRA: Reg. Filing & Reporting (2018), *http://www.finra.org/Industry/Compliance/MarketTransparency/ATS/.*

[638] Total market share is collected from Cboe *http://markets.cboe.com/us/equities/market_share/* (last visited November 8, 2018). ATS weekly market share is collected from FINRA, *https://otctransparency.finra.org* (last visited November 8, 2018).

[639] *See* Angel, Harris, & Spatt, *supra* note 530.

[640] *See, e.g.,* Cboe Letter I; NYSE Letter I.

[641] *See* NYSE Letter II at 8 for more concrete factors considered by liquidity providers.

[642] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791, 69822 (November 15, 2010) (hereinafter ''Risk

Continued

typically enjoy economies of scale over small broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and their customers.[643] As of December 31, 2017, approximately 3,860 broker-dealers filed Form X–17a–5. These firms vary in size, with median assets of approximately $800,000, average assets of nearly $1 billion, and total assets across all broker-dealers of approximately $4 trillion. The twenty largest broker-dealers held approximately 72% of the assets of broker-dealers overall, with total assets of $2.89 trillion, indicating the high degree of concentration in the industry. Of the 3,860 broker-dealers that filed Form X–17a–5, 397 are members of U.S. equities exchanges. Broker-dealers that are members of equities exchanges had, on average, higher total assets than other broker-dealers, with median assets of $25.5 million, average assets of $9.2 billion, and total assets across all broker-dealers that are members of exchanges of $3.65 trillion.

d. Market for Assets Under Management

Many commenters expressed concern about the impact of the Pilot on the market for assets under management, particularly on exchange-traded products (''ETPs''). Asset management firms compete with each other in a segment of the market for assets under management. They offer different types of investment vehicles, such as mutual funds, close-end funds, and ETPs,[644] which compete with each other to attract investor funds. Investor funds in an investment vehicle are pooled together and invested in financial assets, with investors sharing any profits or losses incurred by the investment vehicle according to each investor's interest in the vehicle. Asset management firms generally earn revenue by charging fees based on the value of the assets they manage on behalf of investors in their investment vehicles.[645]

Investment vehicles compete with other investment vehicles that follow similar investment strategies to attract investor funds. They often rely on differences in expense ratios, tracking error, and redemption and trading characteristics when competing to attract investor funds.[646]

One subset of investment vehicles are ETPs. ETPs differ from other investment vehicles in their trading and redemption characteristics. ETPs are investment vehicles that issue shares that can be bought or sold throughout the day on securities exchanges in the secondary market at a market-determined price.

ETPs provide investors with a diverse set of investment options. While the first ETPs held portfolios of securities that replicated the component securities of broad-based domestic stock market indexes, some ETPs now track more specialized indexes, including international equity indexes, fixed-income indexes, or indexes focused on particular industry sectors such as telecommunications or healthcare. Some ETPs seek to track highly customized or bespoke indexes, while others seek to provide a level of leveraged or inverse exposure to an index over a fixed period of time. Investors also have the ability to invest in ETPs that do not track a particular index and are actively managed.

A number of commenters noted that ETP issuers face strong competition within similar investment strategies and that small differences in fees and trading characteristics, such as spreads, daily volume, and intraday volatility, may be meaningful to market participants when deciding which ETPs to trade or invest in.[647]

As of September 2018,[648] there were 2,003 ETPs categorized as exchange traded funds (''ETFs''), 223 ETPs categorized as non-ETF ETPs, and 18 ETPs categorized as ETMFs.[649] As of this date, ETPs had total net assets of $3.74 trillion. The ten largest ETPs accounted for 28.0% of total ETP net assets and 27.8% of the average dollar trading volume on secondary markets.

As the statistics above indicate, ETFs represent the majority of ETPs, they possess characteristics of both mutual funds, which issue redeemable securities, and closed-end funds, which generally issue shares that trade at market-determined prices on a national securities exchange and are not redeemable.[650] Similar to mutual funds, ETFs continuously offer their shares for sale. Unlike mutual funds, however, ETFs do not sell or redeem individual shares. Instead, ''authorized participants'' that have contractual arrangements with the ETF (or its distributor) purchase and redeem ETF shares directly from the ETF in blocks called ''creation units.''[651]

An authorized participant that purchases a creation unit of ETF shares directly from the ETF deposits with the ETF a ''basket'' of securities and other assets identified by the ETF that day, and then receives the creation unit of

Management Controls for Brokers or Dealers with Market Access'').

[643] *See id.* Larger brokers, or those with more order flow, also benefit from the economies of scale that accompany the tiering structure typically provided by exchanges. Accordingly, the brokers with the most liquidity-providing orders may benefit disproportionately from rebates because they generally receive higher rebates within the various tiered pricing models of exchanges.

[644] Not all ETPs are pooled investment vehicles. For example, exchange traded notes (''ETNs''), which are a subset of ETPs, are unsecured, unsubordinated debt securities that trade in the secondary market on exchanges.

[645] Investment companies can also earn revenue from other activities such as lending securities.

[646] Actively managed investment vehicles also rely on their historical performance when competing to attract investor funds.

[647] *See, e.g.* JPMorgan Letter, at 4; STANY Letter, at 4; Healthy Markets Letter II, at 8; Morgan Stanley Letter, at 3–4.

[648] The results are based on data collected from Bloomberg and Morningstar as of September 30, 2018 for US-domiciled ETPs.

[649] ETFs operate under exemptive orders that allow them to register as investment companies under the Investment Company Act. *See* 15 U.S.C. 80a–3(a)(1). Non-ETF ETPs are other ETPs that are not registered under the Investment Company Act. Some are pooled investment vehicles with shares that trade on a securities exchange, but they are not ''investment companies'' under Investment Company Act because they do not invest primarily in securities. Such ETPs may invest primarily in assets other than securities, such as futures, currencies, or physical commodities (*e.g.,* precious metals). Others are not pooled investment vehicles. For example, ETNs are senior, unsecured, unsubordinated debt securities that are linked to the performance of a market index and trade on securities exchanges. See fn. 10 and accompanying text in the ETF Proposal, *infra* note 651, at 37333. ETMFs are exchange traded managed funds. ETMFs also operate under exemptive orders that allow them to register as investment companies under the Investment Company Act, but they have different disclosure requirements than ETFs. *See, e.g.* Eaton Vance Management, et al., Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

[650] The Investment Company Act defines ''redeemable security'' as any security that allows the holder to receive his or her proportionate share of the issuer's current net assets upon presentation to the issuer. *See* 15 U.S.C. 80a–2(a)(32). While closed-end fund shares are not redeemable, certain closed-end funds may elect to repurchase their shares at periodic intervals pursuant to rule 23c–3 under the Investment Company Act (''interval funds''). Other closed-end funds may repurchase their shares in tender offers pursuant to rule 13e–4 under the Exchange Act.

[651] The Commission's exemptive orders typically contain a representation by the applicant that an authorized participant will be either: (a) A broker or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a DTC participant, which has executed a participant agreement with the ETF's distributor and transfer agent with respect to the creation and redemption of creation units. *See, e.g.,* Emerging Global Advisors, LLC, et al., Investment Company Act Release Nos. 30382 (February 13, 2013), 78 FR 11909 (February 20, 2013) (notice) and 30423 (March 12, 2013) (order) and related application. In June 2018, the Commission proposed a new rule under the Investment Company Act of 1940 that would permit ETFs that satisfy certain conditions to operate without obtaining an exemptive order. In connection with the proposed exemptive rule, the Commission proposed to rescind certain exemptive orders that have been granted to ETFs and their sponsors. *See* Securities Exchange Act Release No. 10515 (June 28, 2018), 83 FR 37332 (July 31, 2018) (''ETF Proposal'').

ETF shares in return for those assets.[652] The basket is generally representative of the ETF's portfolio[653] and, together with a cash balancing amount, equal in value to the aggregate NAV of the ETF shares in the creation unit.[654] After purchasing a creation unit, the authorized participant may hold the individual ETF shares, or sell some or all of them in secondary market transactions. The redemption process is the reverse of the purchase process: The authorized participant redeems a creation unit of ETF shares for a basket of securities and other assets.[655] While the Commission currently lacks data on authorized participants, a 2015 survey-based study of fifteen fund sponsors, which together offer two-thirds of all existing ETFs (covering 90% of all ETF assets), finds that the average ETF has 34 authorized participant agreements.[656] The study further reports that creation and redemption transactions occurred only on between 10% to 20% of trading days and that only 10% of the daily activity in all ETF shares (by volume) are creations or redemptions.[657]

Investors can purchase individual ETF shares in the secondary market at prices that may deviate from the ETF's NAV. As a result, ETF investors may trade shares at prices that do not necessarily reflect the intrinsic value of the underlying ETF assets.[658]

As discussed in the ETF Proposal,[659] the combination of the creation and redemption process with secondary market trading in ETF shares provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.[660] For example, if ETF shares are trading on national securities exchanges at a ''discount'' (a price below the NAV per share of the ETF), an authorized participant can purchase ETF shares in secondary market transactions and, after accumulating enough shares to compose a creation unit, redeem them from the ETF in exchange for the more valuable securities in the ETF's redemption basket.[661] The authorized participant's purchase of an ETF's shares on the secondary market, combined with the sale of the ETF's basket assets, may create upward pressure on the price of the ETF shares, downward pressure on the price of the basket assets, or both, bringing the market price of ETF shares and the value of the ETF's portfolio holdings closer together.[662] Alternatively, if ETF shares are trading at a ''premium'' (*i.e.,* a price above the NAV per share of the ETF), the transactions in the arbitrage process are reversed and, when arbitrage is working effectively, keep the market price of the ETF's shares close to its NAV.[663]

However, authorized participants, other market participants, and arbitrageurs acting in secondary markets may incur costs and be exposed to risk when engaging in arbitrage. The costs include bid-ask spreads and transaction fees associated with the arbitrage trades. In addition, during the time it takes arbitrageurs to execute these trades, they are exposed to the risk that the prices of the basket assets and the ETF shares change. As a consequence, arbitrageurs may decide to wait for any mispricing between the market price of ETF shares and NAV per share to widen until the expected profit from arbitrage is large enough to compensate for any additional costs and risks associated with engaging in the transaction.[664]

A number of commenters noted that, in order to promote liquidity in thinly-traded ETPs, exchanges offer market makers who meet certain quoting requirements enhanced rebates when supplying liquidity in certain less actively traded ETPs.[665]

e. Transaction-Based Fees and Rebates

Exchanges are required to disclose their current fee schedules, which include transaction-based fees and rebates, connectivity fees, membership fees, among others.[666] When exchanges update their fees, they are required to file Form 19b–4 with the Commission; fee changes are permitted to take effect upon filing under Section 19(b)(3)(A) of the Exchange Act.[667] Although these fee schedules and Form 19b–4 fee filings contain information about fees beyond transaction-based fees and rebates, in this baseline, the discussion is limited to only transaction-based fees and rebates and any changes thereto.

Table 2 reports the range of minimum and maximum transaction fees and rebates, as well as the number of categories for each (in parentheses below the fee ranges), by exchange, as reported by each exchange on their recent fee schedules.[668] On average,

[652] An ETF may impose fees in connection with the purchase or redemption of creation units that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution (''transaction fees'').

[653] The basket might not reflect a *pro rata* slice of an ETF's portfolio holdings. Subject to the terms of the applicable exemptive relief, an ETF may substitute other securities or cash in the basket for some (or all) of the ETF's portfolio holdings. Restrictions related to flexibility in baskets have varied over time. *See* the ETF Proposal, *supra* note 651, at 37354–58.

[654] Non-ETF ETPs also offer creation and redemption processes. Some Non-ETF ETPs that are organized as pooled investment vehicles may offer creation and redemption processes similar to ETFs. Other Non-ETF ETPs may offer creations or redemptions on a less frequent basis. For example, some ETNs may only be redeemed weekly.

[655] An authorized participant may act as a principal for its own account when purchasing or redeeming creation units from the ETF. Authorized participants also may act as agent for others, such as market makers, proprietary trading firms, hedge funds or other institutional investors, and receive fees for processing creation units on their behalf. *See* Abner, D.J. *The ETF Handbook: How to Value and Trade Exchange Traded Funds,* 2nd ed., Wiley Finance (2016) (''ETF Handbook'').

[656] *See, e.g.,* Antoniewicz, R. & Heinrichs, J. (2014). ''Understanding Exchange-Traded Funds: How ETFs Work.'' *ICI Research Perspective,* Vol. 20(5) (*available at: https://www.ici.org/pdf/per20-05.pdf*) (''Antoniewicz'').

[657] NSCC is the sole provider of clearing services for ETF primary market transactions. Whether a creation or redemption order is eligible to be processed through NSCC depends on the eligibility for NSCC processing of the securities in the ETF's basket. *See id.*

[658] It is possible for both the ETF's NAV per share and its market price to deviate from the intrinsic value of the ETF's underlying portfolio. In addition, there may be cases in which the ETF's market price is closer to the intrinsic value of the ETF's portfolio than its NAV per share. *See, e.g.,* Madhavan, A. & Sobczyk, A. (2016) ''Price Discovery and Liquidity of Exchange-Traded Funds.'' *Journal of Investment Management,* Vol 14(2) (available at: *https://www.joim.com/price-dynamics-and-liquidity-of-exchange-traded-funds-2/*).

[659] *See* the ETF Proposal, supra note 651, at 37384.

[660] ETFs also operate under several conditions designed to facilitate an efficient arbitrage mechanism. For example, ETFs are required to provide some degree of transparency regarding their portfolio holdings by disclosing their holdings prior to the commencement of trading each business day (*i.e.,* portfolio transparency).

[661] This redemption would also cause the ETF's assets under management to decline.

[662] As part of this arbitrage process, authorized participants are likely to hedge their intraday risk. For example, when ETF shares are trading at a discount to an estimated intraday NAV per share of the ETF, an authorized participant may short the securities composing the ETF's redemption basket. After the authorized participant returns a creation unit of ETF shares to the ETF in exchange for the ETF's baskets, the authorized participant can then use the basket assets to cover its short positions.

[663] Market participants also can engage in arbitrage activity without using the creation or redemption processes by buying/shorting shares in the ETF while simultaneously shorting/buying the ETF's underlying assets.

[664] As discussed above, authorized participants can also hedge the intraday risk associated with the arbitrage process. *See supra* note 662.

[665] *See, e.g.,* Virtu Letter, at 7; Cboe Letter I, at 17–18.

[666] *See* 17 CFR 240.19b–4(m)(1), which requires each SRO to post and maintain a current and complete version of its rules, including those related to transaction-based fees and rebates, on its website.

[667] As discussed *supra* Section IV.B.1.b.vi, fee information, such as that included in exchange fee schedules or Form 19b–4 fee filings, does not have standardization or formatting requirements.

[668] The transaction fee and rebate ranges in Table 2 are collected from recent fee schedules (as of July 31, 2018) available from each individual exchange's website (listed in Table 1). Table 2 provides the date from which these fee schedules were reported.

Continued

U.S. exchanges have 18 access fee categories and 21 rebate categories associated with these fee schedules.[669] For the maker-taker exchanges, access fees do not exceed the Rule 610(c) cap at $0.0030, but are as little as zero in some fee categories for some exchanges; taker-maker exchanges, because they are not restricted in the amount they can charge to non-marketable limit orders, have fees that range as high as $0.0033. Seven exchanges have some categories of rebates that exceed the maximum access fees charged by exchanges.[670]

Table 2 also provides the number of fee revisions for the exchanges as reported in their Form 19b–4 fee filings to the Commission in the last five years (August 1, 2013–July 31, 2018). Exchanges, on average, have changed their fee schedules 34 times in the last five years,[671] indicating that the average exchange revises its transaction-based fee schedules about seven times per year (approximately every 7.4 weeks).

TABLE 2—SUMMARY OF TRANSACTION-BASED FEE SCHEDULES FOR U.S. NATIONAL EQUITIES EXCHANGES AS OF JULY 2018

Exchange	Fee model	Number of revisions (5 years)	Date of fee schedule	Fees (# of categories)	Rebates (# of categories)
Cboe BZX	Maker-Taker	54	8/16/2018	$0.0000–$0.0033 (29)	($0.0010)–($0.0032) (18)
Cboe BYX	Taker-Maker	51	8/9/2018	$0.0000–$0.0033 (40)	($0.0005)–($0.0022) (12)
Cboe EDGA	Taker-Maker	41	8/1/2018	$0.0000–$0.0032 (48)	($0.0004)–($0.0027) (14)
Cboe EDGX	Maker-Taker	53	8/16/2018	$0.0000–$0.0032 (37)	$0.000–($0.0032) (20)
BX	Taker-Maker	29	7/20/2018	$0.0005–$0.0030 (13)	$0.0000–($0.0021) (12)
Phlx (PSX)	Maker-Taker	24	5/21/2018	$0.0028–$0.0030 (3)	$0.00–($0.0030) (8)
Nasdaq	Maker-Taker	54	7/25/2018	$0.0000–$0.0030 (4)	$0.0000–($0.00325) (36)
NYSE Arca	Maker-Taker	51	8/1/2018	$0.0005–$0.0035 (68)	($0.0002)–($0.0035) (65)
NYSE American	Flat	9	7/26/2018	$0.0002–$0.0030 (12)	$0.0000–($0.0045) (4)
NYSE	Maker-Taker	42	8/10/2018	$0.0003–$0.0030 (20)	$0.0000–($0.0045) (41)
NYSE National[672]	Taker-Maker	11	7/26/2018	$0.0003–$0.0025 (16)	($0.0002)–($0.0020) (2)
CHX	Maker-Taker	8	4/26/2018	$0.0007–$0.0040 (5)	($0.0009)–($0.0020) (2)
IEX	Flat	10	8/1/2018	$0.0009	$0.0009

For several of the exchange families, information about revenues and costs attributed to transaction-based fees and rebates is available in aggregate from Form 10–K filings. Using the statements of income from Form 10–K filings for 2017 capturing the net (of rebates) transactions-based fee revenues, the Nasdaq exchanges (Nasdaq, BX, and PSX) earned $253 million.[673] Based on the same measure the NYSE-affiliated exchanges (NYSE, NYSE Arca, NYSE American, and NYSE National) earned $196 million in transaction-based fees net of rebates,[674] while the BATS Global Markets (now, Cboe BZX, Cboe BYX, Cboe EDGA, and Cboe EGDX), for the year ended December 31, 2017, earned $153 million in transaction-based fees net of rebates.[675] Neither CHX (which became a NYSE-affiliated exchange in 2018) nor IEX or their affiliates are publicly traded, meaning that these exchanges do not file an annual Form 10–K with the Commission. As a result, public information regarding the revenues or profits associated with transaction-based fees does not exist for these exchanges.

Information on the net transactions-based revenues for each individual exchange, as opposed to the amounts reported for exchange groups in Form 10–K filings, is not currently publicly available, making it difficult to analyze the fees and rebates for an individual exchange. To estimate the net transactions-based revenues for each individual exchange, Table 3 reports the maximum and median net transaction-based fees based on each exchange's

The ranges in fees are the minimum and maximum fees and rebates reported by each exchange.

[669] This average does not include the IEX exchange as the fee structure is a flat one. *See also, e.g.,* RBC Letter II (attaching a report titled ''Complexity of Exchange Pricing and Corresponding Challenges to Transparency and Routing'' in which they identify ''1,023 separate pricing 'paths'—i.e., separate fees or rebates—across these exchanges.'').

[670] *See, e.g.,* CFA Letter, at 6.

[671] The median number of revisions to fee and rebate schedules by exchanges is 41 over the five-year period.

[672] NYSE acquired NSX in January 2017, and the exchange is now known as NYSE National. As of May 2018, the exchange re-opened for trading and began submitting new fee schedules periodically.

[673] *See* Nasdaq Form 10–K filings (2017), *available at https://www.sec.gov/Archives/edgar/data/1120193/000112019318000003/ndaq1231201710-k.htm.* Transaction-based revenues for equity securities accounted for approximately 59% of total operating income net of rebates and 25% net of rebates and brokerage, clearing, and exchange fees. The Commission has revised the revenue number for Nasdaq for 2017 revenue per the correction provided in the Nasdaq Letter II.

[674] *See* Intercontinental Exchange Form 10–K filings (2017), *available at https://www.sec.gov/Archives/edgar/data/1571949/000157194918000003/ice2017123110k.htm.* For the Intercontinental Exchange, net cash equity transaction-based revenues were approximately 8.2% of operating income for 2016.

[675] *See* Cboe Form 10–K filings (2017), *available at https://www.sec.gov/Archives/edgar/data/1374310/000155837018000953/cboe-20171231x10k.htm.* Cboe's acquisition of BATS Global Markets became effective on March 1, 2017. For the year ending December 31, 2017, the net transaction-based revenues were 41% of Cboe operating profits.

most recently reported fee schedule and the share volume of each exchange for July 25, 2018 through August 24, 2018.[676] As evidenced by the significant differences between the sum of net of rebate revenues for entities reporting to the same exchange group obtained from Table 3 and the total net of rebate revenues for each exchange family reported on the Form 10–K or 10–Q filings, this approach does not yield reliable results, highlighting the limitations on the data currently available to researchers.

TABLE 3—ESTIMATES OF ANNUALIZED PER-EXCHANGE NET TRANSACTION-BASED FEE REVENUES FROM TRANSACTION-BASED FEES AND MONTHLY EXCHANGE SHARE VOLUME

[For July 25, 2018–August 24, 2018]
[In millions]

Exchanges	Share volume (millions) [677]	Annualized midpoint difference	Per share profit (median)	Annualized maximum difference	Per share profit (maximum)
Cboe BZX	9,014	($486.75)	($0.00450)	$248.78	$0.0023
Cboe BYX	7,136	25.69	0.00030	239.76	0.0028
Cboe EDGA	1,853	1.11	0.00005	62.26	0.0028
Cboe EDGX	8,165	(4.90)	(0.00005)	205.77	0.0021
BX	4,389	36.87	0.00070	158.02	0.0030
Phlx (PSX)	1,035	16.15	0.00130	37.27	0.0030
Nasdaq	23,087	(34.63)	(0.00013)	831.14	0.0030
NYSE Arca	13,024	23.44	0.00015	515.75	0.0033
NYSE American	473	(3.69)	(0.00065)	17.03	0.0030
NYSE	17,823	(128.33)	(0.00060)	641.63	0.0030
NYSE National	920	3.31	0.00030	25.40	0.0023
CHX	830	8.96	0.00090	30.87	0.0031
IEX	3,757	N/A	0.00000	N/A	0.0000

C. Analysis of Benefits and Costs of Transaction Fee Pilot

1. Benefits of Transaction Fee Pilot

The Commission expects that the benefits of the Pilot will fall into two categories: (1) More informed policy decisions, including more information about the economic impact of transaction-based fees and rebates, and (2) other benefits that may accrue to market participants for the duration of the Pilot. In this section we discuss each of the categories of benefits as well as potential limitations to the applicability of information to be drawn from the Pilot.

a. Benefits of More Informed Policy Decisions

The Commission expects that the primary benefit of the Pilot will be to inform the Commission and public of the economic impact of exchange transaction-based fees and rebates.[678] As a result, the Commission will have data to better inform its regulatory consideration of exchange transaction-based fee-and-rebate pricing models and fee changes, and the potential effects of changes to its regulatory approach concerning the same. In general, more informed regulatory decisions are more likely to result in regulatory approaches that better balance costs and benefits relative to regulatory decisions based on less precise information. In other words, many of the economic benefits derive from subsequent decisions that the Commission can neither predict nor commit to at this time. Indeed, the Commission cannot predict at this time whether the results of the Pilot will suggest any particular policy direction and recognizes that the results could suggest that existing exchange transaction-based fee caps and related rebates may be more beneficial to investors than the policy alternatives examined in the Pilot.

i. Expected Analysis From the Pilot

The Proposing Release discussed the theoretical impact of exchange transaction-based fees and rebates on several potential effects such as conflicts of interest, fragmentation, complexity, liquidity, and off-exchange competition and explained that certain components of the Proposed Pilot would facilitate the study of these effects.[679] As noted above, the Commission believes that little empirical evidence currently exists regarding these effects.

More specifically, the Pilot will provide information on the direct effects of exchange transaction fee and rebate levels on execution quality and market quality and will facilitate studies of the impact of fees and rebate levels on market participant behavior and competition, including potential conflicts of interest. Sections IV.C.2 and IV.D. discuss many potential economic effects for which this economic analysis

[676] The share volume is obtained from Cboe, *available at http://markets.cboe.com/us/equities/market_share/* (last visited September 18, 2018). To compute the maximum profit attainable, staff took the difference between the highest possible transaction fee and the lowest possible rebate and multiplied it by the monthly share volume. For a midpoint profit, the median of the transaction fees less the median of the rebates is computed and multiplied it by share volume. In order to make the results comparable to those reported above from Form 10–K filings, the monthly profits are annualized by multiplying each monthly profit amount by 12.

[677] Monthly share volume obtained from Cboe for July 25, 2017 through August 24, 2017, Cboe, U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/* (last visited September 18, 2018).

[678] In contrast, one commenter opined that the primary benefit of the Pilot would be ''the 'better fills' that institutional investors will get after the pilot is introduced.'' Nasdaq Letter III, at 9. This commenter asserted that the Commission had not done a proper cost benefit analysis because its analysis of benefits did not account for the ''opportunity costs'' inherent in order routing decisions, or other factors which would impact institutional orders. *See id.* Consequently, the commenter asserted that the Commission overstated the benefit of the Pilot. *See id.* However, the Commission does not agree that ''better fills'' will be a certain result of the Pilot. Furthermore, the Commission disagrees that it has not adequately analyzed the costs of the Pilot. As noted above, the Commission has quantified the likely economic effects of the Pilot where possible; however, the Commission is unable to quantify all of the economic effects because it lacks the information necessary to provide reasonable estimates. The Commission agrees with the commenter that quantifying benefits using existing data is difficult, thus underscoring the need for a Pilot. A more detailed analysis of the Pilot's impact on trading costs can be found in Section IV.C.2.b.

[679] *See* Proposing Release, *supra* note 2, at Section V.

is unable to draw unambiguous conclusions. For example, many commenters disagreed on how reducing exchange fees and rebates affects the competitive landscape between exchanges and off-exchange venues in the market for trading services,[680] and the analysis here recognizes that many competitive forces can drive order flow in either direction. The Pilot will provide insight into the impact of transaction fees and rebates on this competitive landscape and can perhaps even shed light into the mechanism behind any observed changes. Further, one commenter argued that this economic analysis ''does not accurately account for the actual level of orders impacted by conflicted broker routing.'' [681] The Commission believes that it cannot establish the actual level of orders impacted by potentially conflicted broker routing with current data and has designed the Pilot in part to gather more data on the extent to which rebates impact order routing decisions, as explained in the section that follows. The Commission also notes that the Pilot seeks to study the effects of exchange pricing models on market quality and execution quality, which could affect all orders. The Pilot will facilitate the study of order flow among different venues, which could provide insights into whether changes in exchange transaction-based fees and rebates affect, for example, the level of fragmentation. Existing literature suggests that transaction-based pricing has contributed to an increase in the number of venues competing for order flow over time.[682] By offering rebates or Linked Pricing, start-up maker-taker and taker-maker exchanges have been able to attract order flow from exchanges such as NYSE and Nasdaq, thereby reducing liquidity externalities, or concentration of order flow to a preferred venue, and leading to increased fragmentation of the market for trading services.[683] By altering the access fee and rebate structures for exchanges, researchers may be able to identify whether these changes lead to more (or less) concentration of liquidity and how they affect competition for order flow among exchanges, which could lead to less (or more) market fragmentation.[684]

Test Group 2 will provide insight into the natural equilibrium level of access fees, within the current regulatory structure, in the absence of rebates and Linked Pricing.[685] As discussed above, prohibiting exchanges from offering Linked Pricing in Test Group 2 is intended to complement and reinforce the prohibition on rebates.[686] Although Rule 610(c) caps the maximum access fee for exchanges at $0.0030, in the absence of rebates and Linked Pricing, competition among exchanges could drive the average access fee to an amount substantially below $0.0030.[687] As noted in Section IV.A.2, exchanges have a reduced competitive incentive to reduce fees because doing so would require reducing the rebates that attract order flow to the exchange. Test Group 2 will allow competition among exchanges, in the absence of pressure to offer high rebates or Linked Pricing, to determine the level of access fees, which the Commission and others can observe during the Pilot. Like the other examinations the Pilot can facilitate, the results of an analysis of the equilibrium access fees are not currently predictable with much certainty.

The Pilot will facilitate studies of the impact of exchange transaction-based fees and rebates on liquidity by studying metrics such as the quoted spreads.[688] The width of the quoted spread is considered to be an indicator of a stock's liquidity, with narrower spreads generally indicating more liquid securities. The analysis below is Section IV.C.2.b.iv identifies several reasons that reducing fees and rebates could increase or decrease quoted spreads. The Pilot could provide information on whether exchange fees and rebates affect the liquidity of securities, as measured by the quoted spreads, across different test groups.[689]

The Commission disagrees with commenters who said that the Pilot was inappropriate because of a one-size-fits-all approach.[690] In selecting the number of securities for each Test Group, the Commission staff divided NMS securities into three common stock strata and three ETP strata by liquidity to determine how many stocks each stratum requires to achieve statistical power.[691] The staff also separately examined ETPs to determine how many ETPs would be required to achieve statistical power. Having statistical power within each Test Group, and within each Test Group by liquidity strata, helps to ensure that researchers will be able to use Pilot data to inform the Commission regarding the issue of whether different securities should have the same regulatory treatment.

ii. How the Pilot Facilitates Study

The Pilot will simultaneously create different fee environments, each of which restricts transaction-based fees differently to allow for the comparison of securities that are simultaneously in different regulatory regimes. The study of these comparisons will inform the Commission about economic distortions that may arise as a result of transaction-based fees. Because of the size and length of the Pilot, the Commission believes that the different fee environments over representative subsamples of NMS securities, even though implemented temporarily, will produce effects on market participant behavior that are identical or similar to

[680] *See e.g.,* Cboe Letter I, at 12; NYSE Letter I, at 9; Nasdaq Letter I, at 2, 5 (suggesting that the Pilot may impact competitive dynamics between exchanges and ATSs).

[681] *See, e.g.,* Nasdaq Letter III at 1.

[682] As discussed in the baseline, the number of exchanges has increased since 2005, and market share has become less concentrated over the same time period. The majority of the U.S. equities exchanges belong to three exchange groups. The Commission believes that any analyses of the effects of transaction-based fees on order routing decisions can appropriately control for exchange groups.

[683] *See, e.g.,* ICI Letter II at 2.

[684] *See, e.g.,* Fidelity Letter, at 9.

[685] Equilibrium refers to conditions of a system in which all competing influences are balanced. For instance, with respect to the Test Group 2, this could be the level of transaction fees charged by exchanges from which no exchange has any incentive to increase or decrease that fee outside of a constrained competitive margin. This will be the equilibrium transaction fee. *See also,* discussion in Section II.C.7.e. An important potential benefit of the Pilot could result if the no rebate Test Group were able to demonstrate a set of conditions wherein regulatory fee caps might not be necessitated in an environment in which natural competitive forces could effectively cap access fees. This would occur if in the no-rebate Test Group the equilibrium fee charged during the Pilot was lower than the fee cap—implying that the fee cap was not binding in this situation.

[686] If Linked Pricing were not prohibited, market participants could potentially circumvent the prohibition on rebates through Linked Pricing mechanisms. Therefore, including prohibitions on rebates or Linked Pricing could provide information to the Commission and the public about potential conflicts of interest associated with rebates or substitutes for rebates, such as Linked Pricing, as well as the equilibrium fee that emerges in the absence of rebates or Linked Pricing.

[687] *See, e.g.,* Fidelity Letter, at 9; Citadel Letter, at 5. In addition to removing rebates or Linked Pricing in Test Group 2, the Commission could also temporarily suspend limitations on access fee caps imposed by Rule 610(c). Implementing multiple changes within a single test group, however, could prevent researchers and others from clearly determining the effect of the prohibition of rebates on order routing decisions of broker-dealers from the effect resulting from the removal of access fee caps if Rule 610(c) restricted access fees during the Pilot.

[688] *See, e.g.,* ICI Letter II at 3 (noting that the Pilot could facilitate the study of how access fees and rebates affect liquidity, including quoted spreads).

[689] *See.* Academic studies suggest that the majority of retail orders are executed off-exchange at prices based on the NBBO, thereby providing retail investors with better prices in the presence of rebates. If, however, large rebates provide incentives for broker-dealers to route retail orders to these exchanges instead of to off-exchange venues, retail customers may not be fully aware of the total cost associated with their orders. *See, e.g.,* Angel, Harris, & Spatt, *supra* note 530.

[690] *See, e.g.,* Nasdaq Letter I at 9.

[691] *See supra* Section II.C.5 (discussing statistical power) and *infra* note 695.

those that would arise under a similar permanent change.

As explained below, three distinct features of the Pilot's design will facilitate analyses of the relationship, if any, between fees and potential economic distortions. Specifically, the Pilot is designed to provide (1) representative results; (2) more direct access to data that is currently unavailable or requires lengthy and labor-intensive effort to compile and process; and (3) sufficient information to determine causality. The following sections discuss in detail how each of these aspects of the Pilot could facilitate studies of the issues described above.

(1) Representative Results

In the context of the Pilot, representative results mean that the impact of the Pilot's terms on a Test Group during the Pilot Period is likely to be consistent with the impact of the results on the Test Group if the Pilot's terms were permanent (as opposed to temporary). Representative results are desirable for researchers and policy makers because it ensures that inferences drawn from the results of analysis of Pilot data are likely to be similar to those that would emerge if the terms were permanent. As discussed in the baseline, current analyses are limited by some combination of the following: Data from a single broker-dealer, a small sample of securities, a single exchange, or a short sample period. By contrast, the Commission believes that the Pilot, as designed, will produce more representative results. Specifically, as discussed in detail below, the Pilot will cover a large stratified sample of NMS stocks (including ETPs), both maker-taker and taker-maker exchanges, and transaction fee caps as well as a prohibition on rebates and Linked Pricing, and will have a two-year duration with an automatic sunset at the end of the first year unless the Commission determines, at its discretion, that the Pilot shall continue for up to one additional year.[692]

The Commission believes that the Pilot will produce representative results, presenting a significant improvement on existing studies, because the Pilot applies to a large stratified sample of NMS stocks (including ETPs) with prices of at least $2.00 per share at the date of the Pilot Securities selection, with average daily volume of 30,000 shares or more, and with no restrictions on market capitalization.[693] In particular, the Commission recognizes that any possible conflicts of interest related to transaction-based fees could vary across securities such that the results of a pilot focused only on large capitalization stocks may not provide information relevant to small capitalization stocks or ETPs.[694] Including a broad sample of NMS stocks allows the results to inform policy choices across subsets of these securities. The stratification of the stocks selected for each Test Group is designed to ensure that each Test Group and the control group have a similar composition within a given stratum, facilitating a comparison of Test Groups and the Control Group, which further supports the representativeness of results. If, for instance, the Test Groups and Control Group had a different composition within strata, researchers outside the Commission might not be able to distinguish whether differences across Test Groups and the Control Group stem from different fee environments or different sample composition, rendering the results less representative. In addition, the Commission believes that the sample sizes in the Test Groups are sufficient to provide the statistical power necessary to identify differences across the samples, even within strata.

The Commission notes that while the adopted Pilot will be able to provide representativeness within strata, changes since the Proposal affect the representativeness of the Test Groups as a whole. In particular, in response to commenters who called for fewer stocks to be included in the Pilot, Commission staff conducted a supplemental analysis of Test Group sizes needed to achieve statistical power.[695] In contrast to its analysis in the Proposal,[696] the Commission analyzed the sample sizes in each stratum rather than using the lowest power stratum to determine the ratio of test group stocks to control stocks. As a result, the ratio of test group stocks to control group stocks is lower for some strata. In other words, the Commission was able to reduce the number of securities in test groups by weighting the composition of the test groups relative to the control group more heavily toward securities in certain strata in which more data would be needed to achieve statistical power. While analyses of the Pilot that do not consider the strata may fail to provide representative results, the addition of the stratum identifier to the Exchange Lists will allow researchers in and outside the Commission to consider the strata in their analyses.

The Commission believes that the inclusion of a broad sample of NMS stocks, including small and mid-capitalization stocks, ensures representative results from the Pilot. Although previous studies, as discussed above, suggest that any possible conflicts of interest are likely to be the greatest for small-capitalization securities,[697] the Commission believes that it is important to the design of the Pilot to include these small and mid-capitalization stocks (including ETPs). In particular, including these securities in the Pilot will allow the results of the Pilot to inform policy choices across any subset of these securities.

Representativeness of results of the Pilot will also be promoted by the choice of the Pilot Security selection date. Rule 610T(b) and (c) contemplate that the Commission will select and announce the Pilot Securities prior to the Pilot start date. As noted in the Proposal, the Commission anticipates that it will assign and designate by notice each Pilot Security to one Test Group or the Control Group approximately one month prior to the start of the Pilot. By assigning securities close to the start of the Pilot, each Test Group and the Control Group are likely to be more comparable during the Pilot. Because stratification criteria (*e.g.,* market capitalization and liquidity) vary naturally over time, the closer the assignments occurs to the Pilot start date, the more comparable the Test Groups will be during the Pilot. Selection of securities close to the start of the Pilot also will be more likely to

[692] As designed, the Pilot will exclude NMS securities that have prices below $2.00 per share as of the date of pilot selection and NMS securities with average daily volume of less than 30,000 shares. As detailed above, the data will also be produced for a six-month pre-Pilot Period and a six-month post-Pilot Period.

[693] *See, e.g.,* Brandes Letter, at 2 (supporting applying the Pilot to the ''widest range of stocks possible''); Spatt Letter, at 1–2.

[694] *See, e.g.,* Battalio Equity Market Study, *supra* note 5307.

[695] The supplemental analysis made several improvements over the analysis used to identify the proposed test group sizes in an attempt to refine the analysis to respond to commenters' desire for smaller test groups while preserving statistical power. First, the supplemental analysis used more refined methodology that more directly controlled for time series and cross-sectional dependencies. Second, the supplemental analysis considered three quoted spread strata instead of two market capitalization stratum. The market capitalization strata was originally necessary to control for any overlap with the Tick Size Pilot, but quoted spread strata more directly align with the potential economic significance of fees and rebates relative to anticipated transaction costs and the Tick Size Pilot has ended. Third, the supplemental analysis eliminated stocks that trade below 30,000 shares per day. *See also supra* Section II.C.6. *See supra* note 175 (citing commenters that favored smaller test groups).

[696] *See* Proposing Release, *supra* note 2, at 13019.

[697] *See, e.g.,* Battalio Equity Market Study, *supra* note 5307; Harris, *supra* note 5307; RBC Letter I, at 5–6.

include the intended universe of securities, by avoiding securities that exit between the adoption of the Rule and the start of the Pilot, while also capturing new securities that enter the market during this period. Further, to the extent that market participants would change their behavior in anticipation of the Pilot, setting the selection period close to the Pilot effective date could reduce the effect of such behavior on pre-Pilot data.

The results of the Pilot will be further representative because the Pilot applies to all U.S. equities exchanges regardless of fee structure. Broker-dealers potentially face transaction-fee related conflicts of interest regardless of whether those fees are on maker-taker exchanges or taker-maker exchanges, and rebates on either the make or take side can both impact market quality and execution quality. Further, a pilot that addresses only a single fee structure would not produce results relevant for policy choices that also would apply to another fee structure.

Applying the Pilot to all exchanges also improves upon the existing analysis of the limited fee experiment conducted by Nasdaq,[698] which only covered a single exchange, as explained in Section IV.B.1.a.ii. While the results from that study are suggestive that broker-dealers routed customer orders to other exchanges that did not change their transaction-based fees and rebates, reasons other than potential conflicts of interest could have impacted the changes in order routing decisions. The Commission believes that the Pilot will achieve representativeness by requiring transaction-fee changes for all U.S. equities exchanges, which will allow researchers in and outside the Commission to identify how these revisions affect order routing decisions across exchanges. As discussed above, excluding non-exchange trading centers does not forfeit the representativeness of the results to be obtained from the Pilot, as including them would expand the Pilot to dissimilarly situated trading centers whose fee models and regulatory treatment are incomparable to exchanges. Further, the Pilot will require that changes to fees or rebates are applied at the security level, which means that for any given security, the limitation on access fees or rebates is ubiquitous across all exchanges.

In addition, the Pilot achieves representativeness by imposing a fee cap and a prohibition on rebates and Linked Pricing. The existing literature suggests that the potential distortive effects arising from access fees could induce behavior that would be different from the distortions arising from rebates or Linked Pricing. Therefore, the inclusion of caps on both fees and rebates or Linked Pricing allows for a more comprehensive analysis of any possible conflicts of interest than could be achieved by focusing solely on fees or rebates.

The Commission further believes that the duration of the Pilot will produce sufficiently representative results. If broker-dealers incorporate transaction fees and rebates into their order routing decisions, a two-year duration for the Pilot, with an automatic sunset at the end of the first year, unless the Commission publishes a notice determining that the Pilot shall continue for up to a second year, would likely make it economically worthwhile for broker-dealers to change their routing behavior during the Pilot by making it costly to avoid the Pilot.[699] Specifically, as discussed below, the Commission recognizes that broker-dealers will incur costs to incorporate new fee schedules that are consistent with the Pilot's requirements into their order routing decisions.[700] Broker-dealers could ignore the Pilot to avoid these costs. If enough broker-dealers ignore the Pilot, the Pilot might not produce results that provide the Commission a sense of the likely impact of permanent changes to fee caps or rebates. However, to the extent that broker-dealers incorporate transaction-based fees and rebates into their order routing decisions, ignoring the Pilot will also impose costs on broker-dealers, and these costs increase with the duration of the Pilot. The Commission believes that the Pilot duration, even with a one-year sunset, is long enough to produce representative results because, as discussed below in Section IV.C.2.b.ii, broker-dealers that incorporate transaction-based fees and rebates into their routing decisions will find it economically worthwhile to adapt their behavior in response to the Pilot. Further, the provision to suspend the automatic sunset facilitates representative results because it provides the Commission with flexibility as the data from the Pilot develops. For example, the Commission could suspend the sunset if, for example, it believed that additional time would help ensure that market developments are fully reflected in the data with sufficient statistical power for analysis, recognizing that such market developments are uncertain. Therefore, the sunset provides flexibility to the Commission to observe developments during the Pilot to determine whether to allow the sunset to occur.

Some commenters disagreed that one year will be sufficient to achieve a representative sample.[701] One commenter said that ''robust data . . . should take two years'' and that ''technological changes . . . to routing and algorithmic logic for some firms are a hurdle that could require significant time to implement.'' [702] Another commenter noted the ''complexities of the pilot and the opportunities for significant market evolutions.'' [703] The Commission notes that it will consider these and other concerns, as noted above, in deciding whether or not to suspend the automatic sunset.

The Commission believes that the Pilot will produce representative results despite the Pilot's treatment of stocks cross-listed on Canadian exchanges during the Pilot and the exclusion of stocks with average daily volume of less than 30,000 shares. A supplemental staff analysis found that the exclusion of the interlisted Canadian stocks from the selection of securities for test group inclusion would not materially impact the representativeness of the remaining sample.[704] Second, the exclusion of securities with average trading volume of less than 30,000 shares per day should not materially affect the representativeness of the results because the trading in these stocks generates less than $100 per day in fees or rebates. Additionally, low trading volume stocks tend to have wider spreads rendering a rebate of $.0030 a significantly smaller incentive relative to the size of the spread than it would be for higher volume tighter spread securities. Because of these two factors, the Commission believes fees and rebates are economically much less meaningful inducements to provide liquidity for these stocks. Because of the diminished economic significance of rebates in

[698] *See, e.g.,* Larry Harris Letter, at 9.

[699] *See, e.g.,* Joint Asset Managers Letter, at 2. Other commenters agreed that the Pilot duration will be sufficient but for other reasons. See, e.g., Fidelity Letter at 9 and CFA Letter at 6.

[700] *See, e.g.,* Citi Letter, at 5 and Larry Harris Letter, at 11. Also, *see infra* Section IV.C.2.b.ii for a discussion of the costs broker-dealers could incur during the Pilot.

[701] *See, e.g.,* Babelfish Letter at 3 and Healthy Markets Letter at 19.

[702] *See* Babelfish Letter at 3.

[703] *See* Healthy Markets Letter I at 19.

[704] Specifically, the supplemental analysis compared the distributional characteristics of all US listed stocks (including Canadian interlisted stocks) to the distributional characteristics of the subset of US listed stocks that excludes Canadian interlisted stocks to determine whether distributional characteristics of the subset differs statistically significantly from the distributional characteristics of all US listed stocks. The analysis finds that the distribution of the subset that excludes Canadian interlisted securities is statistically similar to the distribution of all US listed stocks.

these extremely low volume stocks, the Commission believes that there is a lower risk of applying a suboptimal transaction-based fee regulatory regime in these stocks. In other words, because rebates are economically less meaningful for these securities the benefits of the Pilot in informing policy decisions regarding transaction-based fees in these securities are likely low. In addition, the supplemental staff analysis found that excluding these securities increased the potential statistical power of the Pilot.

Some commenters suggested that the exclusion of ATSs from the data gathering hinders the representativeness of the data obtained from the Pilot.[705] The Commission understands that ATSs often negotiate bespoke agreements with individual subscribers for a bundle of services for which rebates may or may not play a significant role. Even if the Commission obtained detailed information on all of these agreements, it may not be possible to identify the fees or rebates they pay for order flow from the fees for the other bundled services the ATS offers the subscriber in a manner sufficient for inclusion in the Exchange Transaction Fee Data. Also, as discussed in section IV.D.2.a it is uncertain whether the Pilot will lead to exchanges to be in an improved or diminished competitive position with ATSs. Further, without including ATSs in the Pilot, ample public data exists to assess the market share of ATSs relative to exchange market share to observe and measure off-exchange order flow changes.

(2) Expansion of Readily Available Data

The Commission also expects the Pilot to provide data that would otherwise require lengthy and labor-intensive collection. Having a representative source of data is critical for the production of research and analyses about the impact of transaction-based fees on potential distortions. If more data becomes available, that data will assist the Commission in analyzing potential conflicts of interest.

The Commission believes that the data produced by the Pilot will improve upon existing data,[706] as is discussed in more detail below. The ready availability of the Exchange Transaction Fee Summaries will facilitate the study of distortions and the equilibrium level of fees and rebates by reducing the cumbersome nature of collecting fee data. Further, the Pilot will make information on order routing decisions available to the Commission on a more granular level than current readily available data and will improve the feasibility of Commission staff analysis of order routing data during the Pilot.[707]

The Pilot will enable Commission staff to gain improved access to order routing data and will provide access to fee data in a simplified and standardized form, which will improve the quality of the analyses produced as a result of the Pilot. Although certain order routing data and exchange fee schedules are publicly available through a combination of Rule 606 disclosures and exchange websites, respectively, the Pilot will resolve a number of limitations associated with using currently available data to study the effect of transaction-based fees on potential conflicts of interest and their impact on market quality and execution quality.

The order routing data that Commission staff will obtain as a result of the Pilot will provide superior information to that readily available today. Data will be available for a representative sample of NMS stocks, across all broker-dealers, and exchanges, at the daily frequency, which will provide sufficient data for analyses, while providing more statistical power than the Rule 606(a) public reports can provide. Relative to the data that some studies have acquired from broker-dealers and exchanges,[708] the order routing data will also allow Commission staff to observe a time series of order routing data across broker-dealers and exchanges. Further, more granular order routing data (*e.g.,* daily order routing statistics that separate principal and agency trading as well as auction, post only, and other orders) than that available publicly will facilitate more targeted analysis. Together, these characteristics of the data will facilitate Commission staff research on issues such as potential conflicts of interest, which will improve the quality of the information available to the Commission for policy decisions.

The following discussion illustrates how the data obtained from the Pilot could be used to study the Commission's objectives.[709] The key components in the order routing data that facilitate studies of the impact of transaction-based fees and rebates on order routing and execution quality are daily volume information at the exchange, stock, and broker-dealer level, the separation of liquidity taking and liquidity making orders, the Order Capacity, the Order Designation, the time to execution for liquidity-providing orders, and the ability to estimate fill rates. The routing volume allows Commission researchers to measure how much volume each broker-dealer sends to each exchange each day in individual securities, which can be combined with the Pilot Securities Exchange List and the Exchange Transaction Fee Summary to observe patterns in routing and correlate those patterns with fees and Test or Control Group membership. The exchange level is required to match the order routing data with the fee data; the broker level is required to allow for different routing strategies across broker-dealers; and the daily level in the data facilitates statistical power. The separation of liquidity taking and liquidity making orders allows researchers to match the order routing volume to the potential fee or rebates in the Exchange Transaction Fee Summary. Order Capacity allows Commission researchers to compare order routing and execution quality statistics for Agency Orders to Principal Orders, which are less subject to conflicts of interest concerns than Agency Orders and, thus, provides an added means of obtaining causal identification. Order Designation allows researchers to exclude auction orders and to separately analyze Post Only orders because these orders types are subject to different fee structures (auction orders do not get rebates) or exist for the purpose of capturing rebates (Post Only). Excluding or separately analyzing these orders types provides for cleaner tests that are better able to measure the impacts consistent with the objectives of the Pilot. Finally, the time to execution and ability to estimate fill rates (using orders received, executed, canceled or rerouted)

[705] *See, e.g.,* Nasdaq Letter I, at 2, 5 and RBC Letter I, at 4.

[706] *See* Section IV.C.1.a. For commenter statements supporting the usefulness of the data to be obtained from the Pilot *See,* e.g., Clark-Joseph Letter, at 1, AJO Letter, at 1, CII Letter, at 3, NYSTRS Letter, at 1, Barnard Letter, at 1; ICI Letter I, at 1–2; MFS Letter, at 1; Nuveen Letter, at 2; Better Markets Letter, at 2; RBC Letter I, at 2; Invesco Letter, at 2; CFA Letter, at 1; State Street Letter, at 2; Wellington Letter, at 1; Joint Pension Plan Letter, at 2; Oppenheimer Letter, at 2; Angel Letter I, at 1. Some commenters suggest that the data will not be useful because it excludes data from ATSs and doesn't account for other forms of remuneration that broker dealers receive which may also impact order routing decisions. *See* NYSE Letter 1 at 1,8–10; ProAssurance Letter, at 2; Cboe Letter I, at 15; Nasdaq Letter I, at 2.

[707] The aggregation and availability of the data gathered by the Pilot is one of the primary benefits of the Pilot and provides much of the value of the data collected. *See, e.g.,* NYSE Letter II, at 13; Cboe Letter I, at 3.

[708] *See, e.g.,* Battalio Equity Market Study, *supra* note 530.

[709] *See* NYSE Letter II, at 13 suggesting that the proposing release did not provide an illustration for how the data could be used to study the Commission's objectives.

provides Commission researchers with execution quality information not readily available for liquidity providing or liquidity taking orders.[710]

An additional requirement of the Pilot is that the exchanges will be required to provide a standardized dataset of fees, the Exchange Transaction Fee Summary, to the public. In particular, this information will allow researchers in and outside the Commission to create proxies for which exchanges are likely to be more or less expensive and which offer the highest rebates. For instance, within Test Group 1, the maximum allowable access fee is $0.0010; however, each exchange may have different base and top-tier fees. Thus, only knowing that a security is in Test Group 1 will be incomplete information about the impact of transaction-based fees and rebates. Moreover, the Exchange Transaction Fee Summary will provide researchers in and outside the Commission with historical (realized) average and median per share fees and rebates to enable an ex post analysis of how actual fees affected past order routing decisions, which is not available from any data source today.

Exchanges will construct Exchange Transaction Fee Summaries according to an XML schema to be published on the Commission's website, and exchanges will update this information monthly.[711] These data will be standardized and consistently formatted, which will ease the use of these data for researchers in and outside the Commission, as each exchange will have to report the Base, Top Tier, average and median fees, as detailed above in Section III.E. Each month, exchanges will be required to report realized average and median per share fees, as well as any ''spot'' revisions to fees associated with Form 19b–4 fee filings to the Commission. These fee data will be publicly posted on each exchange's website.[712]

The Exchange Transaction Fee Summary released during the Pilot will: (1) Ease aggregation across exchanges, which affords researchers in and outside the Commission an opportunity to obtain representative results; (2) replicate across studies, which will provide validation of findings; and (3) reduce burdens associated with fee data collection, which could encourage more research on the impact of fees and rebates on routing behavior. Thus, the Commission believes that a standardized reporting of summary data on fees by the exchanges will facilitate analysis of the effect of transaction-based fees.

The rule will require that the Exchange Transaction Fee Summary be structured using an XML schema to be published on the Commission's website.[713] Data that are structured in a standard format can result in lower costs to analysts and higher quality data. An additional key benefit of structured data is increased usability. If, for instance, the Exchange Transaction Fee Summary were not standardized across the exchanges, researchers would have to manually rekey the data, a time-consuming process which has the potential to introduce a variety of errors, such as inadvertently keying in the wrong data or interpreting the filings inconsistently, thereby reducing comparability. With the data in the reports structured in XML, researchers in and outside the Commission could immediately download the information directly into databases and use various software packages for viewing, manipulation, aggregation, comparison, and analysis. This will enhance their ability to conduct large-scale analysis and immediate comparison of the fee structures of exchanges. The Commission believes that requiring these reports to be made available in an XML format will provide flexibility to researchers in and outside the Commission and will facilitate statistical and comparative analyses across exchanges, test groups, and date ranges.

(3) Causality

In addition to providing representative results, the Commission expects the Pilot to achieve the benefits identified above because it will, among other things, provide insight into the degree to which exchange transaction-based fees and rebates cause economic distortions that either harm or benefit investors. Such causal information is especially useful when considering policy choices aimed at reducing any possible harmful distortions. As detailed in the baseline, exogenous shocks are a means by which researchers may analyze a causal relationship between changes to transaction-based fees and rebates and changes to order routing decisions of broker-dealers.[714] This Pilot facilitates the analysis of causality through an exogenous shock that simultaneously creates several distinct fee environments, each of which restricts transaction-based fees or rebates differently, enabling synchronized comparisons to the current environment.

The Commission believes that the Pilot is able to facilitate the examination of causality because the Pilot will produce a single exogenous shock that differentially impacts either fees or rebates on both maker-taker and taker-maker exchanges. Exogenous shocks, such as those in the Pilot provide researchers with data to analyze the direction of causality.[715] For example, a researcher seeking to study the impact of the rebates on transaction costs could estimate a difference-in-differences test that compares transaction costs during the Pilot to the transaction costs before the Pilot and then compare the changes in Test Group securities to the changes in Control Group securities. It also will allow investors who receive 606(b)(3) data from their broker-dealers to directly test with their own 606(b)(3) data whether, in the absence of rebates in the most actively traded stocks, they are better able to compete for queue priority and thereby capture the quoted spread when posting liquidity. More generally, the Pilot will allow researchers, including Commission staff and others, to run difference-in-difference tests on many measures of execution quality and market quality based on publicly available data to examine the causal impact of transaction-based fees and rebates on execution and market quality.

As discussed above, the Pilot will produce a single exogenous shock that

[710] The Commission recognizes that many trade-based execution quality statistics are readily estimated from publicly available data. See Section IV.E.5.g infra for a discussion of an alternative to require order-based execution quality statistics during the Pilot.

[711] The standardized fee data, as would be required by the proposed Pilot, is discussed *supra* Section III.E.2.

[712] Rule 610(T) requires each exchange to publicly post on its website downloadable files containing the Exchange Transaction Fee Summary and update them on a monthly basis. Similarly, each exchange will be required to publicly post on its website downloadable files containing daily aggregated and anonymized order routing statistics, updated monthly. Each exchange will also be required to provide daily on its website downloadable files containing the List of Pilot Securities and the Pilot Securities Change List.

[713] As an open standard, XML is widely available to the public at no cost. As an open standard, XML is maintained by an industry consensus-based organization, rather than the Commission, and undergoes constant review. As updates to XML or industry practice develop, the Commission's XML schema may also have to be updated to reflect the updates in technology. In those cases, the supported version of the XML schema will be published on the Commission's website and the outdated version of the schema will be removed in order to maintain data quality and consistency with the XML standard. The Commission's XML schema will also incorporate certain validations to help ensure data quality.

[714] As discussed in the baseline, analysis of causality can be accomplished through either exogenous shocks or econometric methods, such as instrumental variable analysis.

[715] Other econometric techniques, such as instrumental variables methodology, are used when an exogenous shock (or other controlled experiment) cannot be established.

differentially affects multiple Test Groups at the same time. The simultaneity of the exogenous shock across Test Groups facilitates examinations of causality, particularly in the presence of any confounding effects. For instance, if some market-wide event were to result in deviations in order routing behavior during the Pilot, the event would likely affect stocks in each Test Group as well as the Control Group. The simultaneity allows researchers in and outside the Commission to control for the impact of the market-wide event, because the impact would likely affect the Test Groups and the Control Group similarly. For example, in the difference-in-differences test of transaction costs mentioned above, any market-wide effect would result in changes to fill rates in both the Control Group and Test Group 2. Therefore, the comparison of the changes in Test Group 2 to the changes in the Control Group subtracts the market-wide effect from the total effect, thus isolating the effect of the Pilot.

In addition, to facilitate causal analysis of data during the Pilot Period, the Commission believes that it is important to collect sufficient data during a pre-Pilot Period.[716] The pre-Pilot data can then be compared with the data that will be produced during the Pilot Period, which will permit analysis of any changes to order routing behavior, execution quality, and market quality between the two for the Pilot Securities in each of the Test Groups. To make this comparison informative, the length of the pre-Pilot Period needs to be long enough to obtain sufficient statistical power to permit analysis of the stocks and ETP Pilot Securities. In turn, sufficient statistical power in tests that compare the pre-Pilot data to the Pilot data would allow all researchers to more easily use the information obtained from the Pilot to inform future regulatory consideration of exchange transaction fees and rebates and their impact on the markets. The Commission believes that at least six months of pre-Pilot data may be required to obtain the necessary statistical power to permit analysis of the Pilot Securities during the Pilot, particularly ETPs.[717]

The Commission further believes that the combination of the representative sample, data from the Pilot, and the exogenous shock will facilitate analysis by Commission staff (or institutions who receive 606(b)(3) reports from their broker-dealers) of the degree to which transaction-based fee- and rebate-motivated order routing harms order execution quality. In particular, with the exogenous shock, the Order Routing Data, the Exchange Transaction Fee Summaries, and publicly available data, researchers at the Commission can identify both the degree to which transaction fees and rebates impact order routing and, the impact of transaction fee- and rebate-motivated order routing impacts execution quality.

Several commenters seemed to state that the Pilot would produce flawed causal results because the Pilot does not include all forms of remuneration.[718] While the Commission acknowledges that other forms of remuneration may impact routing decisions, the results will still be informative. Even if some order flow migrates between exchanges and off-exchange venues, Commission staff should still be able to identify the impact of exchange fees and rebates on exchange routing.

The Pilot Securities Exchange List and the Pilot Securities Change List further enhance the ability for researchers both inside and outside of the Commission to analyze the effects of transaction-based fees on order routing decisions. By requiring daily updates to the Pilot Securities Change List, the Pilot will provide broker-dealers with the information they need to track the exact securities in each Test Group in real-time and when securities exit the Pilot. This information will be crucial for broker-dealers that choose to adjust their routing behavior during the Pilot. If broker-dealers are unable to track which securities are in which Test Groups, the Pilot results could provide misleading causal information.

iii. Potential Limitations on the Benefits

The Commission recognizes that pilots are unpredictable and as such considered whether possible limitations associated with pilots generally, as well as certain issues presented by the design of this Pilot in particular, would limit the benefits of the Pilot. This section discusses, in greater detail below, issues associated with pilots in general and the potential concerns with resultant research and analyses.

Pilots may face limitations related to the unpredictable nature of market conditions and confounding events. Even if a pilot lasted several years, not all of the market conditions of interest could be experienced. Depending on the requirements of pilots, such limitations might reduce the usefulness of the information obtained.[719] The Commission believes, however, that the value of the information obtained from the Pilot is not dependent upon having variation in market conditions over time, and that the duration of the Pilot will provide sufficient information to inform policy decisions.

In addition, pilots also face the limitation that market participants, knowing that a pilot is underway, may not act as they would in a permanent regime.[720] In the context of this pilot, broker-dealers could choose to retain their current order-routing decisions for the duration of the Pilot, which could be costly to such broker-dealers.[721] Broker-dealers, when deciding whether to adjust any order routing behavior that currently depends on fees and rebates, would likely trade off the costs of retaining strategies that are no longer profitable because of the restrictions imposed by the Pilot against the costs of adjusting the algorithms for their smart order routing systems. Alternatively, broker-dealers could substantially change their business model in order to

[716] *See* Healthy Markets Letter I, at 19.

[717] *See supra.* Section II.D.3.

[718] *See, e.g.,* Cboe 15–16; NYSE at 9–10; Nasdaq I at 7; RBC Letter I, at 4; ProAssurance at 2.

[719] For instance, a pilot could be designed where the information obtained from the Pilot would only be valuable if certain market conditions, such as high market volatility or a recessionary period occurred. If, however, markets experience low volatility or are in an expansionary period, the Pilot may either not be sufficiently long enough to capture the events that it requires to be useful or would have to be extended to ensure that those market conditions could occur.

[720] For example, one study provided evidence suggesting that trading behavior may not have completely adjusted to the Regulation SHO pilot. *See* Ekkehart Boehmer, Charles Jones, & Xiaoyun Zhang, *Unshackling Short Sellers: The Repeal of the Uptick Rule,* Colum. U. (2008), *https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/3231/UptickRepealDec11.pdf.* Despite this effect, the study found evidence consistent with the evidence gathered from the Regulation SHO pilot. *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (Aug. 6, 2004) (hereinafter ''Regulation SHO'').

[721] If broker-dealers have smart order routing systems that use algorithms that maximize rebate capture, as suggested in the Battalio Equity Market Study, *supra* note 530, then for at least some subset of securities, broker-dealers would not be able to pursue rebates from those exchanges, so it would be suboptimal for broker-dealers to not reconsider their order routing choices. If broker-dealers, however, already have order routing decisions that are optimal from a customer's perspective (*e.g.,* based on execution quality) and are not driven by potential conflicts of interest (*e.g.,* maximizing rebates), then for at least some broker-dealers, their order routing decision process may be unchanged. It is also possible that for broker-dealers with algorithms that dynamically route based upon real-time market metrics, including liquidity metrics, expected fill rates, and current queue length, routing logic may not change, however, routing choices may dynamically adjust based upon changes in those variables that result from altered fee schedules that broker-dealers may implement in conjunction with the Pilot.

avoid the Pilot.[722] In addition, the Commission recognizes that the anticipated analysis of order routing data from the Pilot could cause broker-dealers to improve execution quality. This could reflect the ''Hawthorne effect,'' which refers to the idea that people will often improve their behavior if they believe that they are observed. These outcomes could lead to results that would not represent the effects of a permanent rule change. If that were to occur, a few commenters suggested that this could lead the potential benefits of the Pilot to not justify the costs or risks that the pilot imposes.[723]

The Commission believes that the Pilot is designed to obtain empirical information about how fees and rebates affect order routing decisions because the size and length of the Pilot render it unlikely that broker-dealers that currently focus their routing on rebates would maintain existing order routing decisions or alter their business models to avoid the Pilot as suggested by some commenters. In particular, the Commission believes that the Pilot duration is likely to make it economically worthwhile for broker-dealers to adjust their order routing behavior. The costs of ''waiting out'' the Pilot increase with the duration of the pilot, whereas the costs of adjusting the algorithms of the smart order routers, discussed below in Section IV.C.2.b.ii do not.

In addition, the potential compromise of the data due to the Hawthorne effect is limited by at least two factors. First, this is not the Commission's first pilot study. Market participants are relatively accustomed to the Commission collecting data for analysis. Second, the analysis of pre-Pilot data will allow for a baseline observation of unaffected broker-dealer order routing activity. If broker-dealers do not act on conflicts of interest during the baseline period, the Hawthorne effect is irrelevant unless it causes that good baseline behavior.[724] If, on the other hand, broker-dealers do act on conflicts of interest during the baseline and the Hawthorne effect results in good behavior during the Pilot, the Pilot should facilitate the measurement of the conflicts. As a result, the Commission believes that the Pilot will produce useful data despite the possible influence of the Hawthorne effect.

The Commission recognizes that not all objectives of the Pilot would be straightforward to study. For example, the changes in fees or rebates imposed by the Pilot may change transaction costs in a way that results in changes to order routing decisions by broker-dealers, even absent potential conflicts of interest. Studying how order routing changes during the Pilot, without jointly studying why it changes, would not be sufficient to understand any possible conflicts of interest. Researchers can carefully study the data to distinguish the proportion of changes in order routing decisions resulting from execution quality considerations from those resulting from potential conflicts of interest. Nonetheless, this complication could reduce the number and/or quality of studies of the Pilot.

Another limitation on the benefits from the Pilot is that the Pilot will not require that the order routing data be released to the public. As a result, fewer independent analyses of the Pilot's order routing datasets are likely to be performed, compared to the analysis that might have been obtained if the data were publicly released. However, the Commission believes that sufficient analysis will be produced to yield credible and reliable results without public dissemination of the order routing data. In addition, institutions, including broker dealers, asset managers, and transaction cost analysis (TCA) providers, may produce their own analyses using proprietary data and information. To the extent that interested parties prepare their own analyses, they may submit them to *tradingandmarkets@sec.gov* with the words ''Transaction Fee Pilot Analysis'' in the subject line, and the Commission will post those reports on its public website.[725]

Additionally, only NMS stocks with prices of at least $2 prior to the start of the Pilot are eligible for inclusion in the Pilot. One commenter suggested that NMS stocks with prices between $1 and $2 also be included in the Pilot, as the commenter believed that the impact of fees and rebates are likely to be greatest for these securities.[726] The Commission agrees with the commenter who stated that the initial Test and Control Groups in the Pilot would be more representative if they contained securities with prices below $2. However, excluding securities with prices below $2 helps to keep the sample of stocks more stable across the Pilot. This occurs because if a stock's price falls below $1 it is subject to different regulations, such as a different tick size, and thus would be excluded from the Pilot. By excluding stocks below $2 the Pilot mitigates the risk that the representativeness of the sample may diminish over time as Pilot stocks are removed due to their stock prices falling below $1. The Commission believes that the data obtained from the Pilot will be sufficient to obtain data on the effects to changes in fees and rebates on small, low-priced securities (those with prices close to $2, or any Pilot security that drops below $2 per share, but exceeds $1 per share, after the start of the Pilot).

b. Other Benefits of the Transaction Fee Pilot

Other benefits may emerge that could affect markets and market participants for the duration of the Pilot, such as potentially reduced conflicts of interest for some Test Groups, lower all-in costs of trading, or improved market quality. The Commission believes that many of the benefits discussed below will be temporary in nature and affect markets and market participants only for the duration of the Pilot. Because the Commission lacks information on the extent to which the impact of exchange fee-and-rebate pricing models affect investors,[727] the Commission is unable to quantify many of the temporary benefits of the Pilot discussed below.

Some commenters stated their belief that the Pilot would not help investors and issuers.[728] As discussed in Sections IV.C.2.b and IV.D.1 the Commission acknowledges that the Pilot could harm execution quality and/or market quality, but the impacts of the Pilot are uncertain. The Pilot could also improve execution quality and/or market quality for the reasons explained in those same sections. For example, as discussed in detail below,[729] the Commission is uncertain about whether, or among which securities, the Pilot will result in increases or decreases in quoted spreads and investor transaction costs. A decrease in quoted spreads and/or investor transaction costs during the Pilot in some or all stocks in test groups would benefit investors. Likewise, the Commission is uncertain about how the Pilot will affect price efficiency—the

[722] It could be costly for broker-dealers to completely alter their business models because they may not find it worthwhile to do so for a temporary pilot.

[723] *See, e.g.,* FIA Letter, at 3; Citadel Letter, at 4.

[724] The Commission does not believe that the Hawthorne effect will cause ''good'' behavior in the baseline because broker-dealers would need to implement system changes similar to those described in Section IV.B.2.c prior to the pre-Pilot.

[725] As noted above, the Commission encourages market participants to disclose what sources of data they used for their analyses and describe the methodology they used, and to make those reports publicly and freely available.

[726] *See* James Angel Letter I, at 2.

[727] *See supra* Section IV.A.1 (Market Failure at the Broker Dealer Level) and Section IV.A.2 (Market Failure at the Exchange Level).

[728] *See, e.g.,* Nasdaq I, at 1.

[729] *See infra* Section IV.C.2.b.iv

Pilot could plausibly improve or degrade price efficiency in certain test group stocks.[730] Any improvements would benefit issuers and investors.

The Commission believes that another temporary benefit of the rule will be that the Pilot could prevent some traders from indirectly quoting in sub-pennies.[731] Rebates have the practical effect of reducing the minimum tick size by the size of the rebate, and in effect allow trading centers to offer quotations superior to the existing quote. Several studies suggested that the use of exchange fees and rebates to effectively undercut quotations by sub-pennies is particularly severe in taker-maker markets.[732] The Pilot would, in some test groups, reduce or eliminate rebates, which could stem this indirect reduction of tick sizes, and could provide the Commission and the public with information currently unavailable about this issue.

2. Costs of the Pilot

This section describes the compliance costs associated with the Pilot, followed by the additional costs, some of which are temporary, that could affect issuers, investors, broker-dealers, exchanges, and other market participants resulting from the Pilot.

a. Exchange Compliance Costs of the Pilot

The Pilot will impose costs on exchanges to comply with the Pilot's requirements to collect, calculate, and publicly post data certain required by the Pilot on their websites, transmit the order routing datasets to the Commission, as well as to implement fee changes, if required in order to comply with the Pilot's restrictions. Table 4 provides a summary of the costs discussed in this section.

TABLE 4—SUMMARY OF COMPLIANCE COSTS FOR EXCHANGES

Exchange type	Pilot securities exchange list [733]	Exchange transaction fee summary [734]	Order routing data [735]	Fee filings [736]	Total	
	Listing	All	All	All	Listing	Non-listing
Per exchange						
Implementation	15,400	26,100	24,000	96,800	162,000	147,000
Periodic:						
—2-yr Pilot	83,500	55,000	103,800	148,400	391,000	307,000
—1-yr Pilot	50,100	36,600	69,200	74,200	230,000	180,000
Total (implementation + periodic):						
—2-yr Pilot	98,900	81,000	127,800	245,200	553,000	454,000
—1-yr Pilot	65,500	62,700	93,200	171,000	392,000	327,000
Total across exchanges						
Implementation	92,000	339,000	311,000	1,258,000	2,001,000	
Periodic:						
—2-yr Pilot	501,000	714,000	1,350,000	1,929,000	4,494,000	
—1-yr Pilot	301,000	476,000	900,000	964,000	2,641,000	
Total (implementation + periodic):						
—2-yr Pilot	593,000	1,054,000	1,661,000	3,187,000	6,495,000	
—1-yr Pilot	393,000	815,000	1,211,000	2,223,000	4,642,000	

i. Updating the Pilot Securities Exchange List and Pilot Securities ChangeList

During the Pilot, the primary listing exchanges will maintain and make public prior to the start of each trading day the Pilot Securities Exchange List of the securities included in each test or control group on its website. Further, each primary listing exchange will publicly post on its website the updated Pilot Securities Change List prior to the start of each trading day, which will list, separately, changes to applicable Pilot Securities. Additional details of what will be included in each list are provided in Section II.E.1.

Upon the initial publication of the List of Pilot Securities by notice by the Commission, the primary listing exchanges [737] will need to determine which of those securities are listed on their market, and then compile a list of those securities and publicly post on their websites that list as a downloadable file in pipe-delimited ASCII format. The Commission initially estimated that the costs associated with the initial compilation of the Pilot Securities Exchange List would cost $2,060 per exchange based on an estimated burden of 8 hours. However, one commenter stated that it ''anticipates it could take as many as 44 hours'' to compile the initial Pilot Securities Exchange List.[738] The commenter stated that its estimates of the costs associated with the Pilot are based on its ''prior experience implementing the Tick Size Pilot.'' [739] In light of this comment, the Commission is increasing its estimate.[740] Accordingly, the Commission estimates that each primary listing exchange would incur, on average, a one-time

[730] *See infra* Section IV.D.1.

[731] 17 CFR 242.612 (Rule 612 of Regulation NMS) prohibits traders from submitting sub-penny quotations on securities trading at prices over $1.00. The purpose of the sub-penny quotation prohibition was two-fold: (1) To prevent high frequency traders from front-running standing non-marketable limit orders and (2) to reduce the complexity of trading systems. *See* NMS Adopting Release, *supra* note 10, at 37550–57.

[732] *See, e.g.,* Angel, Harris, & Spatt, *supra* note 530; Harris, *supra* note 530. One study noted that as a result of the Tick Size Pilot test group with the trade-at provision, taker-maker markets have seen a significant increase in market share, in part due to this quotation issue. *See* Carole Comerton-Forde, Vincent Gregoire, & Zhuo Zhong, *Inverted Fee Venues and Market Quality 1* (August 10, 2018) (unpublished manuscript) (forthcoming J. Fin. Econ.) *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2939012&download=yes.*

[733] *See infra* Section IV.C.2.a i.

[734] *See infra* Section IV.C.2.a ii.

[735] *See infra* Section IV.C.2.a iii.

[736] *See infra* Section IV.C.2.a iv.

[737] The primary listing exchanges are NYSE, Nasdaq, NYSE American, NYSE ARCA, BATS and IEX.

[738] *See* NYSE Letter I, at 15.

[739] *See id.*

[740] The Commission notes that the Tick Size Pilot required the exchanges and FINRA to also select the Pilot securities whereas the Transaction Fee Pilot does not. Therefore, the Transaction Fee Pilot could result in lower costs than the Tick Size Pilot. Nonetheless, the Commission believes it is reasonable to rely on this commenter's estimate because this commenter has expertise on these costs likely to result in incorporating relatively precise information into the cost estimates.

burden of approximately 44 burden hours per primary listing exchange to compile and publicly post their initial Pilot Securities Exchange List. Consequently, the Commission now estimates a cost of approximately $11,700 per listing exchange to compile the initial list of securities.[741] The Commission understands that each primary listing exchange has existing systems to monitor and maintain the Pilot Securities Exchange List and the Pilot Securities Change List as a result of certain corporate actions.[742] While these systems can be used to collect the data required to be made public for the Pilot Securities Exchange List and the Pilot Securities Change List, these systems would have to be adapted to conform to the requirements of the Pilot. The Commission estimates that it would cost each primary listing exchange approximately $3,720 to develop appropriate systems for the Pilot, or about $22,300 in aggregate across the six U.S. primary listing exchanges.[743] Once these systems are established, the Commission estimates that it would cost each listing exchange approximately $83,500 for the entire duration of the Pilot, or approximately $501,000 across the six primarily listing exchanges,[744] to publicly post on each exchange's website the Pilot Securities Exchange List and Pilot Securities Change List prior to the start of each trading day in pipe-delimited ASCII format. If the Commission determined that the Pilot shall automatically sunset at the end of the first year, the Commission estimates that the costs to each exchange would be $50,100 for a one-year Pilot duration and the six-month post-Pilot Period, or approximately $301,000 across the six primarily listing exchanges.[745]

In sum, the Commission estimates a total cost for each listing exchange of approximately $98,900, or $593,000 in aggregate across exchanges, to comply with the requirement to update and post on its website at the beginning of each trading day the list of its listed securities in each of the Test Groups. This includes an estimated $15,400 in one-time implementation costs and $83,500 in ongoing costs. This estimate is based on one provided by a commenter who, based on their experience with the Tick Size Pilot, estimated that it would take up to 44 hours to compile. [746] Accordingly, the Commission continues to believe its burden estimates are reasonable.

iii. Producing the Exchange Transaction Fee Summary in XML Format

In addition to the Pilot Securities Exchange List provided by the primarily listing exchanges, all U.S. equities exchanges would also need to publicly post on their websites the Exchange Transaction Fee Summary, which are downloadable files containing the initial set of fees at the outset of the Transaction Fee Pilot as well as monthly updates to include both changes to fees and rebates reported in Form 19b–4 fee filings and realized average and median per share fees and rebates, as discussed in Section II.E.2. The Exchange Transaction Fee Summary would need to be updated in response to any changes to its fee schedule following the beginning of each calendar month from the pre-Pilot Period through the post-Pilot Period. The exchanges would be required to provide information on any transaction-based fee and rebate changes, according to Rule 610T(e), that they make during the Pilot, including the effective dates of fee revisions. The rule also requires that each exchange calculate numerous statistics relating to their fees as discussed in more detail in Section II.E.2.

A requirement at the outset of the Pilot is that exchanges would need to report their base and top-tier fees and rebates, which the Commission estimates would cost each exchange $1,130, or about $14,700, in aggregate across the 13 U.S. equities exchanges.[747] The reported base and top-tier fees and rebates would be mandatory elements of the Exchange Transaction Fee Summary. Concurrent with the submission of the Form 19b–4 fee filings to the Commission at the outset of the Transaction Fee Pilot, the exchanges also would be required to publicly post on their websites downloadable files containing the initial Exchange Transaction Fee Summary, using an XML schema to be published on the Commission's website. The Commission estimates that it will cost exchanges $530 each to post this summary dataset to their websites.[748]

The rule would also require that exchanges compute the monthly average and median realized per share fees and rebates, as detailed in Section II.E.2. These data will provide the Commission and the public with aggregated data on the actual per share levels of fees and rebates assessed in the prior month, which the Commission believes is critical for estimating the effects of fees and rebates on order routing decisions. The Commission believes that the costs

[741] This estimate is based on the following: [(Compliance Manager (22 hours) × $298) + (Programmer Analyst (22 hours) × $232)] = $11,660 ≈11,700 per exchange, or $11,660 × 6 primary listing exchanges = $69,960 ≈ 70,000 in aggregate. The burden hours are obtained from *supra* Section III.D.1. The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (SIFMA). The estimated wage figure for attorneys, for example, is based on published rates for attorneys, modified to account for a 1,800- hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate for 2013 of $380 for attorneys. *See* Securities Industry and Financial Markets Association [SIFMA], *Management & Professional Earnings in the Securities Industry—2013* (October 7, 2013), *available at https://www.sifma.org/resources/research/management-and-professional-earnings-in-the-securities-industry-2013/.* These estimates are adjusted for inflation based on Bureau of Labor Statistics data on CPI–U between January 2013 (230.280) and January 2017 (242.839). Therefore, the 2017 inflation-adjusted effective hourly wage rates for attorneys are estimated at $401 ($380 × 242.839/230.280). The Commission discusses other costs of compliance with the rule below.

[742] The Commission notes that the primary listing exchanges maintained public web pages containing similar lists with respect to the recently concluded Tick Size Pilot. The systems to produce lists for the Tick Size pilot should be adaptable to meet the requirements of the Transaction Fee Pilot.

[743] This estimate is based on the following: [(Attorney (4 hours) × $401) + (Compliance Manager (4 hours) × $298) + (Programmer Analyst (4 hours) × $232)] = $3,724 per exchange, or $3,724 × 6 exchanges = $22,344 ≈ 22,300 in aggregate. The burden hours are obtained from *supra* Section III.D.1.

[744] If the Pilot were to automatically sunset at the end of the first year, the total number of days that the exchanges would need to provide the Pilot Securities Exchange List and the Pilot Securities Change Lists would be up to 630 business days (504 business days for the two-year Pilot horizon (252 business days per year × 2 years), and up to 126 business days for the six-month post-Pilot Period). The cost estimate for providing these lists for the entire period is based on the following: [(Compliance Manager (0.25 hour × 630 trading days) × $298) + (Programmer Analyst (0.25 hour × 630 trading days) × $232)] = $83,475 ≈ 83,500, or $83,475 × 6 exchanges = $500,850 ≈ 501,000, in aggregate. The burden hours are obtained from *supra* Section III.D.1. One commenter provided an estimate of 300.5 burden hours for providing these lists, but the Commission continues to believe its own higher burden estimates are reasonable. See Section III.D.6, supra.

[745] If the Pilot were to automatically sunset at the end of the first year, the total number of days that the exchanges would need to provide the Pilot Securities Exchange List and the Pilot Securities Change Lists would be up to 378 business days (252 business days for the one-year Pilot horizon, and 126 business days for the six-month post-Pilot Period). The cost estimate for providing these Lists for the entire period is based on the following: [(Compliance Manager (0.25 hour × 378 trading days) × $298) + (Programmer Analyst (0.25 hour × 378 trading days) × $232)] = $50,085 ≈ $50,100, or $50,085 × 6 exchanges = $300,510 ≈ $301,000, in aggregate. The burden hours are obtained from *supra* Section III.D.1.

[746] *See, e.g.,* NYSE Letter I, at 15.

[747] The estimate is based on the following: (Compliance Manager (2 hours) × $298) + (Senior Business Analyst (2 hours) × $265) = 1,126 ≈ $1,130, or $1,126 × 13 equities exchanges = $14,638 ≈ 14,600 in aggregate. The burden hours are obtained from Section III.D.2, *supra.*

[748] This estimate is based on the following: (Compliance Manager (1 hours) × $298) + (Programmer Analyst (1 hours) × $232) = $530 per exchange, or $530 × 13 U.S. equities exchanges = $6,890 ≈ 7,000 in aggregate. The burden hours are obtained from *supra* Section III.D.2.

associated with computing these summary data on fees and rebates are likely to be larger than the costs associated with updating the Exchange Transaction Fee Summary, discussed in detail below, and would likely require new systems by the exchanges to track the average and median fees.

The Commission estimates that each exchange would have a one-time cost of about $24,000, or approximately $311,000 in aggregate across the 13 U.S. equities exchanges, associated with the development and implementation of systems tracking realized monthly average and median share fees pursuant to the rule.[749] The Commission further anticipates that it would cost an additional $12,000 annually, or $155,000, in aggregate, per year, to ensure that the system technology is up to date and remains in compliance with the rule.[750]

Moreover, as discussed above, exchanges would be required to produce monthly updates to the Exchange Transaction Fee Summary to capture realized average and median per share fees as well as any revisions to fee schedules made by the exchanges, which would be reflected in changes to Base or Top-Tier fees and rebates, detailed in Section II.E.2. The Commission estimates that each month it would cost each exchange $530 to update the dataset of summary fees to reflect the updates to historical realized average and median per share fees and changes to the Base and Top-Tier fees. This would require each exchange to make a total of 36 updates to the Exchange Transaction Fee Summary from the pre-Pilot Period through the post-Pilot Period, if the Commission determined that the Pilot should continue for up to a second year and not automatically sunset at the end of the first year.[751] Each exchange would have total costs of updates to the Exchange Transaction Fee Summary of approximately $19,000 per exchange, or $248,000 among the 13 exchanges over the pilot duration, including pre- and post-periods.[752] If the Pilot were to automatically sunset at the end of the first year, without the Commission determining that an extension for up to an additional year was needed, this would decrease the total number of updates to the Exchange Transaction Fee Summary to 24.[753] Under an automatic sunset at the end of the first year, each exchange would have total costs of updates to the Exchange Transaction Fee Summary of approximately $12,700 per exchange, or $169,000 among the 13 exchanges over the pilot duration, including pre- and post-periods.[754] As detailed above, the Commission estimates that the costs associated with the monthly updates to the Exchange Transaction Fee Summary would be a small fraction of the costs associated with the initial allocation of fees required at the outset of the Pilot.

As discussed in Section II, the rule will require that the Exchange Transaction Fee Summary be published on the exchanges' websites using an XML schema to be published on the Commission's website. The Commission understands that there are varying costs associated with varying degrees of structuring. The Commission believes that most of the exchanges already have experience applying the XML format to market data. For example, the exchanges and market participants regularly use the FIX protocol[755] and FpML[756] to exchange information on highly structured financial instruments and related market data.[757]

The Commission anticipates that implementation of the Pilot's XML schema would draw upon exchange resources and experiences previously used to implement other supply chain information standards, like those discussed above, that were developed by industry consensus-based organizations. Costs generally associated with the implementation may include those for: Identifying the data required by the Pilot within the exchange source systems; mapping the relevant fields in the exchanges' data source systems to the Commission's XML schema; implementing, testing and executing the validation rules; and developing the website posting processes as required by the rule. The initial costs to exchanges of complying with the Commission's XML schema in order to publicly post the Exchange Transaction Fee Summary in this format would be $500 per exchange, or $6,500 in aggregate across the 13 exchanges.[758] For all updates to

[749] This estimate is based on the following, which reflects the Commission's experience with and burden estimates for SRO systems changes: [(Attorney (20 hours) × $401) + (Compliance Manager (20 hours) × $298) + (Programmer Analyst (20 hours) × $232) + (Senior Business Analyst (20 hours) × $265] = 23,920 ≈ $24,000 per exchange, or $23,920 × 13 exchanges = $310,960 ≈ 311,000 in aggregate. The burden hours are obtained from *supra* Section III. D.2.

[750] This estimate is based on the following, which reflects the Commission's experience with and burden estimates for SRO systems changes: [(Attorney (10 hours) × $401) + (Compliance Manager (10 hours) × $298) + (Programmer Analyst (10 hours) × $232) + (Senior Business Analyst (10 hours) × $265] = $11,960 ≈ $12,000 per exchange, or $11,960 × 13 exchanges = $155,480 ≈ $155,000 in aggregate. The burden hours are obtained from *supra* Section III.D.2.

[751] This estimate of updates to the Exchange Transaction Fee Summary is the aggregation of updates from the pre-Pilot Period (6), the two-year pilot period if the Commission determines that an extension of up to an additional year was needed (24), and the post-pilot period (6), for a total number of 36 updates.

[752] This estimate is based on the following: [(Compliance Manager (1 hours) × $298) + (Programmer Analyst (1 hours) × $232)] = $530 per exchange, or $530 × 36 fee changes per exchange = $19,080 ≈ $19,000. The 36 fee changes for the exchange encompass six updates during the six-month pre-Pilot Period, 24 updates during the two-year Pilot Period, assuming that the Commission determines that the additional year is required, and six updates during the six-month post-Pilot Period. In aggregate, updates to the Exchange Transaction Fee Summary are estimated to cost $19,080 × 13 U.S. equities exchanges = $248,040 ≈ $247,000. The burden hours are obtained from *supra* Section III. D.2.

[753] This estimate of updates to the Exchange Transaction Fee Summary is the aggregation of updates from the pre-Pilot Period (6), the one-year pilot period with an automatic sunset at the end of the first year (12), and the post-pilot period (6), for a total number of 24 updates.

[754] This estimate is based on the following: [(Compliance Manager (1 hours) × $298) + (Programmer Analyst (1 hours) × $232)] = $530 per exchange, or $530 × 24 fee changes per exchange = $12,720 ≈ $12,700. The 24 fee changes for the exchange encompass six updates during the six-month pre-Pilot Period, 12 updates during the one-year Pilot Period, assuming that the Commission determines that the additional year is not required and the Pilot is automatically sunset at the end of the first year, and six updates during the six-month post-Pilot Period. In aggregate, updates to the Exchange Transaction Fee Summary are estimated to cost $12,720 × 13 U.S. equities exchanges = $165,360 ≈ $165,000. The burden hours are obtained from *supra* Section III.D.2.

[755] The Financial Information eXchange (FIX) protocol is an electronic communications protocol that provides a non-proprietary, free and open XML standard for international real-time exchange of information related to the securities transactions and markets. *See* Fix Trading Community, *available at https://www.fixtrading.org/.*

[756] FpML (Financial products Markup Language) is an open source XML standard for electronic dealing and processing of OTC derivatives. It establishes the industry protocol for sharing information on, and dealing in, financial derivatives and structured products. *See* Financial products Markup Language [FpML], *available at http://www.fpml.org/.*

[757] Most of the exchanges have at least some portion of their data available through XML formats. For instance, the NYSE Group of exchanges provides daily closing prices, among other data, in XML, Excel, and pipe-delimited ASCII, while the Nasdaq exchanges (Nasdaq, BX, and PHLX) and Cboe exchanges (Cboe BZX, Cboe BYX, Cboe EDGA, and Cboe EDGX), provide daily share volume data, among other data, in XML. Information on the use of XML by exchanges is available for the NYSE, *www.nyse.com,* Nasdaq, *www.nasdaqomx.com,* and Cboe, *www.cboe.com,* exchange groups, respectively, and was obtained from a staff review of information on publicly available exchange websites. The Commission was unable to obtain information from CHX or IEX on their use of XML from information available on their publicly available websites.

[758] This estimate is based on the following, which reflects the Commission's experience with and burden estimates for systems changes to map to an XML schema: [(Programmer Analyst (1 hours) × $232) + (Senior Business Analyst (1 hours) × $265] = $497 ≈ $500 per exchange, or $500 × 13 exchanges = $6,461 ≈ $6,500 in aggregate. *See* Securities

Continued

the Exchange Transaction Fee Summary, the Commission estimates that any burden associated with making those available using the XML schema is included in the costs of the updates discussed above.

In sum, the Commission estimates the total cost of the pilot associated with producing the exchange transaction fee summary in XML format to be approximately $81,000 per exchange if the Pilot runs for 2 years and $62,700 per exchange if the Pilot sunsets at the end of the first year. These costs comprise of approximately $26,100 in one time implementation costs and $55,000 in ongoing costs if the Pilot runs for two years, or $36,600 if the Pilot sunsets at the end of the first year. These costs aggregate to approximately $1,054,000 in total costs across all exchanges if the Pilot runs for the entire two years, and $815,000 if the Pilot sunsets at the conclusion of the first year.

iv. Producing the Order Routing Data

The rule also will require as part of the Pilot that exchanges prepare, in pipe-delimited ASCII format, and transmit to the Commission, order routing data, updated monthly, containing aggregated broker-dealer order routing information. As discussed in Rule 610T(d) and in Section II.E.3, the datasets would contain separate order routing data for liquidity-providing and liquidity-taking orders aggregated by day, by security, by broker-dealer, and by exchange.

The Commission believes that as long as the CAT Phase 1 data are available at the implementation of the Pilot, the exchanges would be able to use that data to construct the order routing data required by the rule. In particular, the CAT data will include records for every order received by an exchange that indicate the member routing the order to the exchange and details regarding the type of security. The CAT data will also include other information necessary to create the order routing data such as order type information, special handling instructions, and execution information. In the event that the CAT Phase 1 data were not available, the exchanges would have to use existing systems to collect the required order routing data. Regardless of which system exchanges use for the order routing data, the Commission anticipates they would incur costs in producing the downloadable files containing aggregated monthly order routing data to be transmitted to the Commission.

The Commission estimates that each exchange would have a one-time cost of approximately $23,900, or approximately $311,000 in aggregate across the 13 exchanges, associated with the development and implementation of systems needed to aggregate the order routing information, as well as store the data, in the pipe-delimited ASCII format specified by the rule and as detailed in Rule 610T(d).[759] The Commission anticipates that it will cost each exchange an additional $12,000 per year, or approximately $156,000 in aggregate per year, to ensure that the system and storage technology is up to date and remains in compliance with the rule.[760]

The rule will require that exchanges produce monthly updates of the order routing data, and transmit them to the Commission in pipe-delimited ASCII format by the end of the month, as detailed in Section II.E.3 and Rule 610T(d). The Commission estimates that the transmittal and updates of the order routing datasets would cost $1,888 each month. This will require each exchange to make a total of 36 updates to the order routing data from the pre-Pilot Period through the post-Pilot Period (if the core Pilot lasts for a full two years). Each exchange would have recurring costs of updates to the order routing data of approximately $68,000 per exchange, or $884,000 among the 13 exchanges over the entire duration of the Pilot, and the pre-Pilot and post-Pilot periods.[761] If the Commission were to allow the Pilot to automatically sunset at the end of the first year, this would decrease the total number of monthly updates to the order routing data by 12 to 24.[762] Under the automatic sunset, each exchange would have recurring costs of updates to the order routing data of approximately $45,300 per exchange, or $589,000 among the 13 exchanges over a one-year Pilot, and the pre-Pilot and post-Pilot periods.[763]

One commenter stated that the Commission underestimated the number of burden hours required to produce the order routing data required by the Pilot.[764] This commenter indicated that the Commission allocated 160 burden hours to compile and produce the order routing data, while the commenter estimates that it would take approximately 400 burden hours.[765] Over the entire Pilot duration, including the six-month pre and post-Pilot periods, the Commission estimates that exchanges would have initial systems burden hours of 80 hours, an additional annual burden of 40 hours to update and maintain those systems, plus 84 burden hours per year to produce and publicly post order routing data monthly.[766]

In sum the Commission estimates the costs of producing the order routing data to include a one-time cost of approximately $23,900 per exchange to set up the data gathering process, $12,000 per year to maintain the data gathering systems, and $1,888 per

Exchange Act Release No. 78309 (July 13, 2016), 81 FR 49431, 49475 (July 27, 2016) (''Disclosure of Order Handling Information''). The estimate is lower than that for proposed Rule 606 disclosures because the costs for those disclosures encompassed many additional requirements beyond the mapping to an XML schema.

[759] This estimate is based on the following, which reflects the Commission's experience with and burden estimates for SRO systems changes: [(Attorney (20 hours) × $401) + (Compliance Manager (20 hours) × $298) + (Programmer Analyst (20 hours) × $232) + (Senior Business Analyst (20 hours) × $265] = $23,920 ≈ $23,900 per exchange, or $23,920 × 13 exchanges = $310,960 ≈ $311,000 in aggregate. The burden hours are obtained from *supra* Section III.D.3.

[760] This estimate is based on the following, which reflects the Commission's experience with and burden estimates for SRO systems changes: [(Attorney (10 hours) × $401) + (Compliance Manager (10 hours) × $298) + (Programmer Analyst (10 hours) × $232) + (Senior Business Analyst (10 hours) × $265] = $11,960 ≈ $12,000 per exchange, or $11,960 × 13 exchanges = $155,480 ≈ $156,000 in aggregate. The burden hours are obtained from *supra* Section III.D.3.

[761] This estimate is based on the following: [(Compliance Manager (4 hours) × $298) + (Programmer Analyst (3 hours) × $232)] = $1,888 per exchange, or $1,888 × 36 fee changes per exchange = $67,968 ≈ $68,000. The burden hours are obtained from *supra* Section III.D.3. The 36 updates to the order routing data for each exchange encompass six updates during the six-month pre-Pilot Period, 24 updates during the two-year Pilot Period, assuming that the Commission determines at the end of the first year that it shall continue the proposed Pilot for up to an additional year, and six updates during the six-month post-pilot period. In aggregate, updates to the order routing data are estimated to cost $67,968 × 13 U.S. equities exchanges = $883,584 ≈ $884,000.

[762] This estimate of updates to the order routing data is the aggregation of updates from the pre-Pilot Period (6), the one-year Pilot Period assuming that the Commission allows the Pilot to automatically sunset at the end of the first year (12), and the post-Pilot Period (6), for a total number of 24 updates.

[763] This estimate is based on the following: [(Compliance Manager (4 hours) × $298) + (Programmer Analyst (3 hours) × $232)] ≈ $1,888 per exchange, or $1,888 × 24 fee changes per exchange = $45,312 ≈ $45,300. The burden hours are obtained from *supra* Section III.D.3. The 24 updates to the order routing data for each exchange encompass six updates during the six-month pre-Pilot Period, 12 updates during the first year of the Pilot Period, assuming that the Commission determines at the end of the first year that it shall automatically sunset the proposed Pilot, and six updates during the six-month post-pilot period. In aggregate, updates to the order routing data are estimated to cost $45,312 × 13 U.S. equities exchanges = $589,056 ≈ $589,000.

[764] *See* NYSE Letter I, at 15.

[765] However, it is unclear exactly how the commenter aggregated the data in the Proposing Release to arrive at 160 hours because they did not provide details of their calculation.

[766] *See* Proposing Release, *supra* note 2, at 13061. Discussion of comments on these estimates is presented in Section III.D.3 *supra*.

month to publish the data. Specifically, the Commission estimates initial one-time implementation costs of approximately $23,900 and ongoing costs of approximately $103,800 per exchange if the Pilot lasts two years or $69,200 if the Pilot lasts one year. These costs total approximately $127,800 per exchange if the Pilot lasts two years—or approximately $1,661,000 in aggregate. These costs decline to approximately $93,200 per exchange—or $1,211,000 in aggregate—if the Pilot sunsets after one year.

v. Fee-Related Costs to Exchanges

When exchanges alter their fees they are required to submit a Form 19b–4 filing with the Commission. Consequently, the Commission expects most exchanges to file two 19b–4 Forms that they would not have otherwise done. Additionally, the Commission expects that the pilot may increase the complexity of these filings. This section provides estimates for the costs associated with the submission of 19b–4 Forms by the exchanges during the Pilot.

At the outset of the Pilot, each equities exchange if their fees do not at that time comply with the Pilot's pricing restrictions, would need to file with the Commission a comprehensive Form 19b–4 fee filing reflecting all of the applicable fees and rebates applicable to each of the Pilot Groups, as well as the Control Group—to reflect the temporary changes to transaction-based fees and rebates as a result of the Pilot. The Commission anticipates that exchanges will incur costs associated with and devote time to optimally assign fees and rebates across Test Groups, within the parameters allowed by the Pilot, including any incentives, tiers, caps, and discounts available. The Commission estimates that it would cost $48,400 per-exchange for the initial Form 19b–4 fee filing or $629,100 in aggregate.[767] The Commission further anticipates that exchanges would bear similar costs upon the completion of the Pilot to prepare Form 19b–4 fee filings for filing with the Commission to reflect changes in fees at the conclusion of the Pilot, should they wish to change their fees or revert to their former pricing models after the Pilot concludes.

In addition to the initial production of the Form 19b–4 fee filing at the outset of the Pilot, exchanges may also choose to make periodic updates to their fee and rebate schedules, and file Form 19b–4 fee filings to effectuate those changes and thereby notify the Commission and the public of those updates. As noted in the baseline, the average exchange makes approximately seven changes to its fee schedules per year. While recognizing the possibility that as a result of the Pilot, exchanges may revise their fee schedules more or less often during the Pilot, the Commission has no basis to expect an increase in the number of Form 19b–4 fee filings other than at the beginning or end of the Pilot and has no basis to expect a decrease.

The Commission also recognizes that as an outcome of the Pilot, the complexity of the Form 19b–4 fee filings could increase if exchanges seek to impose different fees within Test Groups 1, Test Group 2, and the Control Group, thereby increasing the overall costs for exchanges to revise their fee and rebate schedules.[768] As discussed above, the Pilot may require exchanges to design new fee structures to comply with the Pilot's Test Groups, which would then translate into additional information in each Form 19b–4 fee filing submitted during the Pilot. These costs are likely to increase because the exchanges could take more time to design and describe fee structures in each filing than they do designing fee structures today. As discussed above in the baseline, the average fee schedules of exchanges are complex, with many different categories of fees or rebates assessed to NMS stocks. Assuming the frequency remains constant, then the Pilot could increase the incremental costs incurred by exchanges to file the expected Form 19b–4 fee filings during the Pilot.[769] The additional costs would only be relevant for Form 19b–4 fee filings that occur during the Pilot Period, and would not apply to Form 19b–4 fee filings in the pre-Pilot or post-Pilot Periods, as the Commission does not believe that there will be any incremental costs associated with increased complexity of these filings during these periods. The Commission estimates that each exchange would bear an incremental cost of $10,600 per Form 19b–4 fee filing to account for the increased complexity associated with the requirements of the Pilot, or approximately $1,929,000 for the anticipated 182 Form 19b–4 fee filings for fee and rebate revisions across the 13 U.S. equities exchanges during the two-year pilot duration.[770] If the Pilot were to automatically sunset at the end of the first year, the Commission estimates that exchanges would bear costs of approximately $964,000 for the anticipated 91 Form 19b–4 filings for fee and rebate revisions across the 13 U.S. equities exchanges during the first year of the Pilot duration.

In sum, the Commission expects the pilot to impose on each exchange a one-time cost of $48,400 at the beginning and end of the pilot for the additional 19b–4 filings required by the pilot, as well as an ongoing cost of approximately $10,600 per additional 19b–4 filing to account for increased complexity in 19b–4 filings caused by the Pilot. If we assume that exchanges continue to file 19b–4 filings at an average rate of 7 per year and if the pilot lasts for 2 years, these incremental costs sum to approximately $148,400 per exchange—which declines to $74,200 if the pilot ends after the first year. Combining the cost of the two additional 19b–4 filings with the cost of potential increased complexity provides an estimated cost of the pilot associated with 19b–4 filings of approximately $245,200 per exchange—or $3,187,000 in aggregate—if the pilot lasts two years, or $171,000 per exchange—or $2,223,000 in aggregate—if the pilot expires after the first year.

[767] The estimate is based on the following: [(Attorney (40 hours) × $401) + (Compliance Attorney (40 hours) × $352) + (Assistant General Counsel (25 hours) × $449) + (Director of Compliance (15 hours) × $470)] = $48,395 ≈ $48,400, or $48,395 × 13 equities exchanges = $629,135 ≈ $629,100 in aggregate. *See* OMB Control No. 3235–0045 (August 19, 2016), 81 FR 57946 (August 24, 2016) (Request to OMB for Extension of Rule 19b–4 and Form 19b–4 Filings).

[768] The Commission believes that the inclusion of Linked Pricing prohibitions for Test Group 2 should not increase the complexity of Form 19b–4 filings for exchanges because many exchanges already report non-cash incentives, such as tiered pricing or volume discounts, as part of their standard filings. Further, the Commission does not believe that many exchanges currently use Linked Pricing mechanisms and instead most rely on rebates.

[769] Maintaining the current average frequency of 7 19b–4 filings per year would mean that the average exchange would file a total of 14 19b–4 filings during the two-year pilot (7 filings × 2 year duration). If the Commission were to allow the Pilot to automatically sunset at the end of the first year, then the total number of 19b–4 filings could decrease by 7 filings. Annually, across all 13 exchanges, the Commission estimates that there will be 91 19b–4 filings (7 filings × 13 exchanges). If the Commission determines that the Pilot shall continue for a second year, in aggregate, the 13 exchanges could file a total of 182 19b–4 filings (91 × two-year Pilot duration).

[770] The estimate is based on the following: [(Attorney (8 hours) × $401) + (Compliance Attorney (8 hours) × $352) + (Assistant General Counsel (6 hours) × $449) + (Director of Compliance (4 hours) × $470)] =$10,598 ≈ $10,600, or $10,598 × 182 fee changes in aggregate across 13 exchanges over the two-year pilot duration = $1,928,836 ≈ $1,929,000 in aggregate, assuming that the Commission determines that the Pilot shall continue for up to an additional year. If the Pilot were to automatically sunset after the first year, the Commission believes that the costs associated with 91 19b–4 filings (13 exchanges × 7 filings) would be approximately $964,000 (~$10,598 × 91 filings). *See* Request to OMB for Extension of Rule 19b–4 and Form 19b–4 Filings, *supra* note 767.

vi. Other Costs to Exchanges

The Pilot may result in more complicated fee structures that could also increase an exchange's processing costs of tracking and calculating monthly invoices for its members during the Pilot; however, the Commission does not have any information on the costs to exchanges for tracking and calculating monthly member invoices and therefore cannot provide estimates of quantified costs and no commenters provided such information.

b. Other Costs Associated With the Pilot

This section considers additional costs that may occur as a result of the Pilot. Specifically, this section discusses how the Pilot may impact exchanges' fee revenue, broker-dealer compliance costs, brokerage commissions, liquidity, and issuers.

i. Loss of Exchanges' Fee Revenue

The Commission analyzed whether exchanges could experience a change to their fee revenues associated with transaction-based fees and rebates for either of two reasons: A decline in the margin between fees and rebates,[771] or a decline in overall trading volume on an exchange as a result of the Pilot.[772] In the Proposing Release the Commission stated its belief that only stocks in the test group with a cap of $0.0005 (former Test Group 2) would experience narrower margins and estimated that these narrower margins could result in exchanges incurring revenue losses of up to $7,650,000 per month.[773] With the removal of the former Test Group 2 the Commission now believes that the Pilot may not have a significant effect on Exchange revenue, at least not because of narrower margins between fees and rebates.

For stocks in Test Group 1 (the Test Group with a fee cap of $0.0010) the Commission does not believe that the Pilot will result in narrower margins earned by the exchanges because the fee cap in this group is double the current typical average net capture (*i.e.,* margin) that exchanges earn which is approximately $0.0005.[774] Consequently, the exchanges can maintain current margins by reducing the rebate offered at the same level as fees charged are reduced.[775] For stocks in Test Group 2, the Commission also does not believe that the Pilot is likely to shrink margins. For these stocks the fee cap remains at $0.0030, while exchanges are prohibited from paying rebates and offering Linked Pricing. Consequently, the prohibition of rebates for securities in this Test Group would conceivably allow the exchanges to reduce fees to as low as $0.00025—if charged to both parties in a transaction—without reducing the exchange's average net capture per trade. While less likely given competitive dynamics, if the exchanges wanted to increase their net capture, it is possible under the pilot terms for total net capture in group one to be as high as $0.002 (if both side were charged the maximum of $0.001), and in group two to be $0.003, both of which are far in excess of the average net capture that exchanges receive today. For these reasons, the Commission now expects the effects of the Pilot on exchange revenue through impacting per-trade margins to be minimal.

In addition, the Commission believes that the impact of the Pilot on exchange revenues through changes in trading volume are difficult to determine in advance, but recognizes that the magnitude of such changes could be significant and some potential lost revenue could be in a transfer to investors or among exchanges. The Commission considered whether individual exchanges could experience a decline in trading volume for four reasons, as multiple commenters suggested: If exchanges lose volume to off-exchange venues, if volume declines because of increased transaction costs, if the Pilot reduces excessive intermediation, or if volume shifts among exchanges. The Commission recognizes that the Pilot presents a risk that the Pilot could result in less fee revenue for exchanges due to lower trading volumes. However, the Commission believes that decreased trading volume, while one possible outcome of the Pilot, is not the only reasonable outcome, and that the *ex ante* effect of the Pilot on trading volume is difficult to determine.

First, several commenters stated that reducing or eliminating the ability for exchanges to pay rebates may cause exchanges to become less competitive relative to off-exchange venues like ATSs, which would not be so constrained. The analysis in Section IV.D.2.a identifies significant uncertainty in the potential for exchanges to be less competitive relative to off-exchange venues such as ATSs, and identifies conditions in which they could actually be more competitive.[776] Consequently, the Commission cannot determine in advance of the Pilot whether exchanges will lose volume to off-exchange venues.

Second, total trading volume, and consequently exchange revenue, could decline if the Pilot increases transaction costs. A number of issuers expressed the concern via comment letters that the Pilot would lead to lower levels of trading volume because of their experience with the Tick Size Pilot.[777] However, not all issuers felt that the Pilot would result in lower trading volumes. One issuer ''welcome[d] the opportunity for [its] stock to be included in the Pilot'' and did not ''expect that a reduction or outright removal of rebates will have any significant or harmful effects on . . . [its] stock's trading volume.'' [778] On the other hand, if the Pilot decreases the cost of trading on the exchanges, then the Pilot could increase trading volumes on the exchanges. This view was expressed by one commenter who stated their belief ''the Pilot will reduce the costs of trading on exchanges, which may increase trading volumes on the exchanges.'' [779] Lower costs of trading, caused by the reduction in fees, might increase trading volume on exchanges for at least two reasons. First, lower trading costs may induce trades that would otherwise not have occurred by allowing investors the ability to trade on smaller increments of information. Lower trading costs may also induce the participation of new traders, such as short-term traders for whom transaction costs are of greatest concern, to transact in a given stock

[771] On a given trade, an exchange earns the margin between fees and rebates. For example, if an exchange charges a take fee of $.0030 per share and offers a make rebate of $.0025 per share then the margin captured by the exchange is $.0005 per share traded.

[772] A number of commenters expressed concern that the Pilot would lead to decreased exchange revenue largely through decreased trading volume. *See, e.g.,* Cboe Letter I, at 7; NYSE Letter I, at 3 and 15–16.

[773] *See* Proposing Release, *supra* note 2, at 13063.

[774] *See* Proposing Release *supra* 1 at 13067.

[775] This was the case in Canada when in January 2017 the Canadian Securities Administrators (CSA) approved the lowering of the fee cap for non-interlisted Canadian stocks from $0.0030 to $0.0017. In response to this regulation, the Toronto Stock Exchange retained its $0.0004 margin per trade for continuous trading—high priced securities ($1.00 and over) by lowering both fees and rebates by $0.0008. Fees for taking liquidity on non-interlisted securities reduced from $0.0023 to $0.0015 whereas rebates provided to liquidity providers declined from $0.0019 to $0.0011. Fees and rebates for inter-listed securities remained unchanged. *See https://www.tsx.com/resource/en/1501.*

[776] *See* Section IV.D.2.a. *See* also Section IV.C.2.b.iv

[777] *See, e.g.,* Leaf Letter, at 1–2; Ennis Letter, at 2.

[778] T. Rowe Price Letter, at 4–5.

[779] *See, e.g.,* TD Ameritrade Letter, at 7. Other commenters also either expressed their belief that the Pilot would not reduce trading volumes (*see,* e.g., IEX Letter II, at 8; T. Rowe Price Letter, at 5) or expressed uncertainty about the outcome of the Pilot on trading volume (see, e.g. Credit Suisse Commentary, at 5).

who would not otherwise participate. Consequently, if the Pilot leads to decreased trading costs, then trading volumes in those stocks may increase—increasing exchange revenue. In Section IV.C.2.b.iv below, the Commission discusses its belief that the effect of the Pilot on liquidity and transaction costs is not clear and could either increase or decrease. Given this uncertainty in the impact on liquidity, the Commission cannot determine in advance whether the Pilot will result in a reduction in liquidity that would reduce trading volume.

Third, the Pilot may decrease trading volume, and thus exchange revenues, if it results in a reduction in intermediation by market makers for two reasons, but this would be a transfer to investors. The first reason is that market makers from time to time will use marketable orders to balance inventory. If these market makers decline to participate due to reduced rebate incentives, then their marketable orders will not arrive—diminishing trading volume. The second reason decreased intermediation may lead to lower volumes is that non-market makers might begin to execute their trades via non-marketable orders. Non-market makers may submit marketable orders because of an inability to achieve high fill rates with non-marketable limit orders due to significant competition from market makers. The reduction in intermediation may result in situations where two traders with offsetting trades, who would have generated two separate trades with market makers as the counterparty instead execute their trade with each other resulting in one trade. This could occur, for example, if the Pilot reduces queue lengths for investors as discussed in Section IV.C.2.b.iv.(2) below. While this effect would result in a loss in revenue to exchanges that would collect margin on a smaller number of trades, it would be a net gain for investors because executions on a smaller proportion of marketable orders would mean that the investors pay less in transaction fees and would more often capture, or earn, the spread where previously they would have paid the spread to transact.

Fourth, even if overall trading volume does not decline or shift to off-exchange venues during the Pilot, individual exchanges may experience a decline in trading volume if the Pilot leads to a change in market share among the lit exchanges. This mechanism is discussed in Section IV.D.2.a. This section also highlights the difficulties in determining the expected redistribution of market share among the existing exchanges due to potentially countervailing economic effects. To this point, one commenter noted that the loss in revenue estimated above relied on ''exchanges' existing market share percentages'' which ''assumes that exchanges would remain equally competitive for order flow.'' [780] The Commission agrees that the Pilot may impact the level and distribution of trading volume on lit exchanges but notes that such a redistribution would be a transfer among exchanges rather than an economic cost.

The Commission acknowledges that the reduction or elimination of rebates may particularly affect smaller exchanges due to the liquidity externality, especially if their primary competitive differentiation is based upon a modified fee model. As discussed in the Proposing Release liquidity tends to consolidate.[781] Thus, the restrictions on rebates resulting from the Pilot could harm smaller exchanges that may be competing by paying large rebates rather than by producing better prices or execution quality. In the short run, this could lead to lost revenue for these exchanges. It could also have longer-term effects if smaller exchanges consolidate or exit as a result of the Pilot. However, the Commission does not believe that consolidation or exit is likely during the pilot because only about a quarter of NMS stocks will be included in test groups.

The Pilot could also impact exchanges' fee revenue after the conclusion of the Pilot if as a result of the Pilot broker-dealers permanently alter their order routing decisions after the Pilot is completed. One commenter argued that this may be the case and suggested that the Commission's claim that the Pilot's effect on broker-dealers' routing decisions would be temporary ''[was] contradicted by the Commission's own finding that broker-dealers would not change their behavior unless the Transaction Fee Pilot lasts for at least one year.'' [782] To this point, given the competitive nature of financial markets, the Commission does not expect that it would take most broker-dealers up to one year to alter their behavior. Indeed, this commenter supports this belief by stating that exchange and non-exchange trading centers vigorously compete for trading volume, and that market participants are sensitive to revisions in transaction-based pricing models.[783] Given this competition, the Commission believes market participants will likely adjust their behavior quickly both upon the implementation and conclusion of the Pilot, and that the Pilot duration will incentivize broker-dealers not to ''wait out'' the Pilot who could be otherwise inclined to do so if the duration were not sufficiently long.[784]

If the Pilot results in a decline in fee revenue for exchanges, then this could lead to other costs borne by investors as a result. Exchanges could promote additional order types and may even initiate new types of markets as a result of the Pilot, which would only serve to further fragment markets and add to their complexity, the costs of which could be borne by investors.[785] In particular, the Commission recognizes the remote possibility that an exchange holding company could attempt to optimize its overall performance during the Pilot by further diversifying with other exchange models. The Commission believes, however, that a new equity exchange registered in direct response to the Pilot would be unlikely to become operational before the conclusion of the Pilot. In addition, the Commission believes that it is unlikely that exchanges will promote additional order types as a result of the Pilot.

In sum, the Commission believes that the costs to the exchanges due to narrower margins earned per trade are likely to be minimal—if any—due to the removal of the proposed Test Group with the fee cap of $0.0005. However, the Commission does expect that there could be a change in trading volume or a redistribution of market share among exchanges as market participants re-optimize their order routing systems as a result of the Pilot. However, due to the reasons discussed in this section, the Commission cannot determine in advance of the Pilot whether these market share/trading volume changes will increase or decrease exchange revenue. Consequently, the Commission acknowledges that the Pilot may lead to lower trading volume/market share for exchanges, which would impose a cost in terms of lost transaction fee revenue, but is unable to quantify the expected magnitude of this potential cost and no commenter provided an estimate of the amount of the lost transaction fee revenue.

While the Commission cannot determine in advance of the Pilot its impact both in terms of direction and magnitude, the Commission has attempted to estimate the costs should volume decline. Using data from Table 3 in section IV.B.2.e the Commission

[780] NYSE Letter I, at 17.

[781] *See* Proposing Release, *supra* note 2, at 13042.

[782] *See* NYSE Letter I, at 15–16.

[783] *See* State Street Letter, at 2.

[784] *See* Section IV.C.1.a.iii, *supra.*

[785] *See* Section III.A. *See also, e.g.,* Fidelity Letter, at 8.

estimates an annualized upper bound on the profit earned from transaction fees for each exchange. Aggregated across all exchanges this number equals approximately $3 billion per year. However, only about 1/4th of NMS securities will be in a test group subject to the Pilot, so the Commission estimates the Pilot could affect the approximately $750 million per year across all exchanges, depending on how much volume changes. Consequently, if the Pilot were to cause a 10% reduction in trading volume on exchanges then this change could reduce fee revenue on the exchanges by approximately $150 million over two years or $75 million if the Commission were to allow the Pilot to automatically sunset at the end of the first year. However, the Commission does not believe that the 10% reduction in trading volume is a reasonable assumption. While the Swan Study shows that Nasdaq lost 10% of its volume using one volume measure, it lost only 200,000 shares in another. In addition, the Swan Study finds no change in overall volume or in off-exchange volume, just a migration from Nasdaq to other exchanges. Therefore, the Commission does not believe that either the 10% volume reduction or, consequently, the estimate of $150 million revenue reduction is reasonable.

ii. Broker-Dealer Systems Costs

Although the costs of compliance with the Pilot will primarily affect the exchanges, broker-dealers and other market participants are also likely to incur costs as a result of the Pilot. Commenters provided mixed information on the magnitude of these costs. While some commenters stated that the costs to broker-dealers of the Pilot would be substantial,[786] other commenters stated that the costs for broker-dealers associated with the Pilot would not be significant or expensive because exchange fee schedules change regularly and broker-dealers are used to adapting their order routing algorithms to new and changed fee schedules.[787] This section provides the Commission's estimates for broker-dealer compliance costs associated with the Pilot.[788]

In response to the Pilot, market participants might have a one-time cost at the onset and the conclusion of the Pilot to adjust their systems to reflect the shocks and potential additional complexity of transaction-based fees. In addition, there may be additional modifications to routing strategies that are made in subsequent months to adjust to changing liquidity dynamics as behavior changes associated with the pilot settle in. Many broker-dealers have smart-order routing systems that use algorithms to route orders based on certain criteria, such as fill rates, time to execution, lowest fees, or highest rebates.[789] One commenter agreed, stating that such systems changes ''should primarily consist of modifications to the routing tables and other associated operational activities.'' [790] The Commission understands that some of the associated changes and modifications may already be coded into the smart order router (SOR) algorithms such that changes to associated liquidity shifts may be dynamic and automated, *i.e.,* in need of little additional modification.

To estimate these costs, the Commission assumes (1) that all broker-dealer members of exchanges will adjust their systems for the pilot and (2) that all broker-dealer members of exchanges have automated order routing systems.[791] While the Pilot does not directly require broker-dealers to adjust their systems, the Commission expects broker-dealers who do not update their systems may incur significant costs relative to those who do in terms of potential impacts on execution quality and in their ability to manage fees and rebates. Broker-dealers might choose to adjust their systems for the Pilot for many reasons, including to recognize that the Pilot could affect execution quality for investors and/or to better manage fees and rebates.[792] Therefore, the cost estimates assume that broker-dealers will adjust to their existing systems to capture changes in fees and rebates associated with each Test Group of securities, rather than bearing start-up costs associated with implementing new order routing systems.

In its estimates, the Commission recognizes that the costs associated with adjusting the execution algorithms by broker-dealers for the Pilot are likely to be more costly than the periodic updates that broker-dealers may make to incorporate changes to fee schedules implemented by exchanges or to fine tune their strategies. The additional expected costs may occur because changes for the Pilot are likely to require more complex programming that segments stocks into different fee regimes (assuming exchanges implement fees customized to each Test Group), rather than just altering codes or inputs. As of July 2017, exchanges have 18 fee categories and 21 rebate categories, on average.[793] If exchanges maintain the same level of complexity in their fee schedules during the Pilot, up to a two-fold increase in the number of fee and rebate categories could occur, which would increase complexity for broker-dealers who incorporate fees into their order routing decisions.[794] Additionally, the Commission agrees with the commenter who stated that, to the extent that broker-dealers' order routing algorithms are programmed to the exchange, and not the individual security, the Pilot will increase complexity by requiring an adjustment to this methodology.[795] The Commission estimates that the costs to broker-dealers that are members of exchanges to make the initial adjustment to their order routing systems at the outset of the Pilot would be approximately $9,000 per broker-dealer, or $3,573,000 in aggregate across the 397 broker-dealers that are currently members of equities exchanges.[796] The

[786] *See, e.g.,* Larry Harris Letter, at 10–11; STANY Letter, at 2; FIA Letter, at 3; Nasdaq Letter I, at 10; Nasdaq Letter III, at 9.

[787] *See, e.g.,* Vanguard Letter, at 3; Healthy Markets Letter I, at 34.

[788] One commenter stated that the Commission did not consider implementation and coding costs. *See* STANY Letter at 2. However, the commenter does not elaborate on why the Proposing Release estimates of $3,741,000 implementation costs for broker-dealers to adjust their order routing systems at the beginning and end of the Pilot and the $20,726,000 costs for broker-dealers to update their order routing systems for fee changes during the Pilot failed to consider implementation and coding. *See* Proposing Release, *supra* note 2, at 13063–13064.

[789] *See* Bacidore, Jeff, Hernan Otero, and Alak Vasa, 2011, Does smart routing matter?, Journal of Trading 6, 32- 37. (available at *http://jot.iijournals.com/content/6/1/32*), which found that smart-order routers designed to maximize rebates delivered worse execution quality to their clients.

[790] *See* FIF Letter at 8. *See also* FIA Letter at 3; Nasdaq Letter I at 10.

[791] Even in the absence of smart-order routers, broker-dealers could still adjust their execution determinations to take advantage of the changes implemented during the Pilot and these adjustments would incur costs. While the Commission does not estimate these particular costs, the assumption that all broker-dealers have automated order routing systems is reasonable and is necessary to enable the estimation of cost estimates. The Commission believes, however, that the costs to adjusting manual systems could be lower than the costs to adjust automated routing systems. If any broker-dealers still route orders manually, they likely do so because setting up and maintaining manual systems is not economical for them. It is likely that such firms utilize exchange routing services.

[792] *See* sections IV.C.1.a.iii and IV.E.5.a for additional discussion.

[793] *See* Table 2 in Section IV.B.2.f *supra.*

[794] In addition, the Commission recognizes the potential costs to exchanges of this complexity above in Section IV.C.2.a.

[795] *See* Larry Harris Letter, at 10–11.

[796] This estimate is based on the following, which reflects the Commission's experiences with and burden estimates for broker-dealer systems changes: [(Attorney (5 hours) × $401) + (Compliance Manager (10 hours) × $298) + (Programmer Analyst (10 hours) × $232) + (Senior Business Analyst (5 hours) × $265)] ≈ $9,000 per broker-dealer that is a member of at least one exchange. As of December 31, 2016,

Commission further estimates that broker-dealers would bear a similar cost to adjust their order routing systems at the conclusion of the Pilot.

Additionally, the Commission expects that broker-dealers would update their order routing systems with changes to fees or rebates submitted by exchanges through Form 19b–4 fee filings to the Commission during the Pilot. As discussed in the baseline, exchanges, on average, make changes to fees or rebates approximately seven times per year; therefore, broker-dealers are likely to have experience in updating the order routing systems to reflect these routine changes to fees and rebates.[797] As in the estimates of the costs of the initial and final adjustments, broker-dealers are likely to face higher costs per update as a result of the Pilot because of the added complexity of having to update multiple modules within their order routing systems. The Commission's estimates of these updates assume that exchanges update their fees schedules as often during the pilot as at present. Therefore, the costs to broker-dealers associated with the Pilot are the additional costs associated with the complexity of the updates and not the total cost of the updates.[798] In other words, broker-dealers would have updated their systems (or routing tables) anyway in the absence of the Pilot to reflect the same number of exchange fee and rebate changes. The Commission estimates described below reflect the additional cost of the Pilot (''additional costs''), which is how much more an update might cost during the Pilot compared to a scenario without the Pilot.

The Commission believes that the per-update additional costs associated with these changes are likely to be a small fraction of the costs associated with the initial costs of adjusting the routing systems to reflect the required fee and rebate revisions at the outset of the Pilot. The Commission estimates that the additional costs to broker-dealers that are members of exchanges to make periodic adjustments to their order routing systems to reflect changes in fees and rebates would be $265 per adjustment, or approximately $105,000 in aggregate across the 397 broker-dealers that are members of U.S. equities exchanges.[799] As shown above, the Commission expects that exchanges, if submitting changes to fees and rebates at the same rate as they have in the last five years, would submit 182 total revisions to fees and rebates over the two-year pilot duration. Therefore, the aggregate costs of updating order routing systems would be $48,000 per broker-dealer, or $19,056,000 in total across all broker-dealers.[800] If the Pilot were to automatically sunset at the end of the first year, the aggregate costs of updating order routing systems would be $24,000 per broker-dealer, or $9,528,000 in total across all broker-dealers.

In sum the Commission believes that the all in costs to broker-dealers of updating their order routing systems as a result of the Pilot will average approximately $66,000 per broker-dealer to update their systems over the entire Pilot Period. If the Pilot automatically sunsets at the end of the first year, the costs associated with these updates will be approximately $42,000 per broker-dealer.[801] The Commission notes that these estimates may be overstated. Not all broker-dealers are members of all exchanges, which would reduce the total number of changes to the order-routing systems that they would implement. Additionally, the exchanges could resort to more simplified fee schedules relative to the current baseline, which would reduce broker-dealers' costs of updating their systems for the Pilot.

iii. Temporary Increase in Brokerage Commissions

Beyond the implementation and compliance costs for exchanges and broker-dealers associated with the Pilot, the changes to the exchange transaction-based fee and rebate structure could lead to temporary increases in brokerage commissions charged to their customers. Several studies show, and several commenters concurred, that brokerage commissions today are at historically low levels.[802] Brokerage clients may have a preference for low commissions with services provided by broker-dealers, and in turn, may allow broker-dealers to capture rebates (and bear the costs of access fees), either through explicit contracts or implicit agreements.[803] As a result, the Pilot could lead to higher overall commissions as rebates obtained by broker-dealers fall,[804] thereby temporarily reducing the overall welfare of retail brokerage clients as a result of increased commissions.[805]

For instance, the elimination of rebates and Linked Pricing in Test Group 2 could result in a transfer from broker-dealers to exchanges. Assuming, as discussed above, the margin between fees and rebates is approximately $0.0002 per share,[806] with transaction fees of $0.0030 per share and rebates of $0.0028 per share, Test Group 2 could result in a transfer of $0.0028 from broker-dealers to the exchanges with

397 unique broker-dealers were members of exchanges (Form X–17a–5). The aggregate costs of updating order routing systems to reflect the Transaction Fee Pilot requirements would cost $9,000 × 397 ≈ $3,573,000. Note that smaller broker dealers will often use the smart order router of larger broker dealers or those offered by exchanges, and will therefore benefit indirectly from the work done by the providers of their smart order routing services.

[797] Several commenters made similar statements. *See, e.g.,* Vanguard Letter, at 3; Healthy Markets Letter I, at 34.

[798] The Commission cannot estimate and commenters provided no insight into the degree to which the number of fee and rebate revisions by exchanges will increase or decrease during the Pilot.

[799] This estimate is based on the following, which reflects the Commission's experiences with and burden estimates for broker-dealer systems changes: [(Compliance Manager (0.5 hours) × $298) + (Programmer Analyst (0.5 hours) × $232)] = $265 per broker-dealer that is a member of at least one exchange. The aggregate costs updating order routing systems to reflect the periodic fee and rebate revisions would cost $265 × 397 ≈ $105,000.

[800] If 182 total fee and rebate changes were to occur over the duration of the Pilot (13 equities exchanges × 7 revisions per year × 2 years = 182), each broker-dealer would bear costs of updating its order routing systems of $265 × 182 ≈ $48,000, or $19,056,000 ($48,000 × 397) in aggregate across all broker-dealers over the first year of the Pilot. The Commission estimates that costs would be $9,528,000 ($265 × 13 exchanges × 7 updates × 397 broker-dealers) if the Commission determined that Pilot automatically sunset at the end of the first year.

[801] These costs reflect the estimated cost of $9,000 at the outset of the Pilot to update the order routing system to reflect the changes to the fee structure for securities in the test groups, $48,000 to reflect the incremental costs of the estimated 182 revisions to fee schedules during the Pilot ($265 per revisions × 7 revisions per year × 2 years × 13 exchanges), and $9,000 at the conclusion of the Pilot to unwind changes to the order routing systems, for a total of $66,000 per broker-dealer. If the Pilot were to automatically sunset at the end of one year, then these costs would be approximately $42,000 ($265 × 7 revisions × 13 exchanges+2*$9,000) per broker-dealer.

[802] *See, e.g.,* Angel, Harris, & Spatt, *supra* note 530.

[803] *See* Regulation NMS Subcommittee Recommendation for an Access Fee Pilot (June 10, 2016), *available at https://www.sec.gov/spotlight/emsac/emsac-regulation-nms-recommendation61016.pdf* (''June Recommendation''). *See also* Shawn O'Donoghue, 2015, ''The Effect of Maker-Taker Fees on Investor Order Choice and Execution Quality in U.S. Stock Markets'', Working Paper, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2607302.*

[804] Several commenters made similar statements. *See, e.g.,* NYSE Letter I, at 13; ASA Letter, at 2.

[805] The Commission acknowledges differing effects on brokerage commissions could occur as a result of the Pilot depending on whether the client is a retail customer versus an institutional customer. For instance, some brokerage accounts charge per-transaction commissions to retail clients. Institutional commissions, on the other hand, are highly negotiated and may be based on something other than a per trade or per share basis, such as a flat fee for use of a broker's order routing algorithm; however, data on the structure or magnitude of institutional commissions is not publicly available.

[806] There are approximately 8,000 NMS securities and just under 800 will be included in Test Group 2.

respect to their passively posted non-marketable orders, particularly because exchanges would be prohibited from offering Linked Pricing mechanisms that could act as substitutes for cash rebates.[807] The estimates of the potential increased revenue to exchanges are as follows.

Assuming that the share volume in Test Group 2 would be approximately 12.5% of the total share volume across all securities,[808] using data from Table 2 in the baseline, Test Group 2 would have share volume of approximately 11.5 billion each month.[809] If the margin between fee revenue and rebate cost is $0.0002, as discussed above, then under the assumption that exchanges reduce fees to $0.0002 in Test Group 2, the Commission anticipates no change in revenue for exchanges, and no transfer from broker-dealers. If, instead, exchanges charged the maximum fees of $0.0030 while they are prohibited from paying rebates or Linked Pricing in Test Group 2, the Commission estimates a monthly aggregate increase in revenues across all exchanges of $32,200,000.[810] If the volume on each exchange does not change, then the estimated annual average increase in revenues across all exchanges would be $386.4 million [$32,200,000 × 12 = $386.4M]. This transfer of rebates from the broker-dealers to exchanges could potentially increase exchange revenue by approximately 64.1%.[811] Moreover, these costs could likely fall to investors in the form of higher commissions or fees charged to cover the decrease in broker-dealer revenue due to losses in rebates for securities in Test Group 2.[812]

The Commission further acknowledges that if brokerage commissions were to increase as a result of the Pilot, broker-dealers could continue to charge higher commissions even after the conclusion of the Pilot. However, due to competition among broker-dealers, including the proliferation of low-cost online broker-dealers, the Commission believes that broker-dealers would be unlikely to significantly increase brokerage commissions as a result of the Pilot.[813]

Lastly, the Commission acknowledges that brokerage commissions may decrease during the Pilot if the Pilot results in lower execution costs for some test groups, then those lower costs may be passed on to investors in the form of lower commissions. For example, if a broker-dealer pays the transaction fee more often than they earn the rebate, the reduction of fee caps would reduce the cost of transacting for this broker-dealer, which the broker-dealer may pass onto investors in the form of lower commissions.[814]

iv. Temporary Reduction in Liquidity

The effect of the Pilot on liquidity is uncertain as there are reasons why the Pilot may increase as well as decrease liquidity. Several commenters expressed concern that the Pilot would reduce liquidity. These commenter statements largely focus on the impact of the reduction or elimination of rebates. In considering the comments, and as analyzed in the following sections, the Commission considered the impact of the direct effect of rebates on quoted spreads, the impact of a loss of liquidity provision on quoted spreads and depth, the impact of changes in adverse selection on transaction costs, and the impact of potential conflicts of interest on execution quality. In addition, the Commission analyzed estimates of the costs of a potential reduction in liquidity provided by commenters.

The Pilot could result in a positive, negative, or neutral change in liquidity for the stocks in test groups. Adding to this uncertainty, some commenters felt that to the extent that there are liquidity effects, such effects would be minimal.[815] Also, the impacts of the Pilot on liquidity may not be uniform across all securities and several commenters believed that widening of spreads would be limited to a small number of securities. Some commenters stated that the widening of spreads is unlikely to affect the most and least liquid securities, or will not adversely affect liquidity at all.[816] Further, as some commenters explained, less liquid stocks tend to have wider spreads, and therefore, the impact of rebates as an incentive to provide liquidity may become less relevant for these securities.[817]

(1) Direct Impact of Fees and Rebates on Quoted Spreads

The Commission believes the impact of the Pilot on liquidity and transaction costs through a direct adjustment of the quoted prices is uncertain. One study argues that transaction-based rebates may artificially narrow the quoted spread on make-take exchanges by the amount of the rebate.[818] This effect would particularly impact retail investors whose orders are largely internalized at the best quoted prices. However, whether rebates can effectively narrow quoted spreads in a given stock depends on whether that stock's natural quoted spread (without artificial narrowing) is constrained by the tick size. For example, if a stock has a natural quoted spread of less than one penny, which is the minimum tick size, then rebates cannot possibly artificially narrow the quoted spread. Many of the most active stocks have average quoted spreads very close to a penny and the Commission believes that the natural spread in some of these stocks could be at or less than a penny. Consequently, the Commission believes that rebates might not artificially narrow spreads in at least some of the most active stocks and, therefore, that the Pilot might not result in wider quoted spreads in all stocks.[819]

(2) Potential Reduction in Liquidity Provision

The Commission recognizes that the Pilot could reduce the incentives to

[807] Although the Commission believes that competition among exchanges would drive transaction fees down for Test Group 2 as a result of the elimination of rebates, exchanges could charge transaction fees as high as the current cap of $0.0030.

[808] As designed, the Pilot would allocate an equal number of securities to the two test groups and the control group (*e.g.,* the test groups combined would have approximately 25% of the NMS securities and the control group would have 75%). Each test group will have one-half of the combined test group allocation, thereby, in total leaving each test group with 12.5% of NMS securities included in the pilot. Assuming that the allocation of share volume would be similar due to the stratification of the sample discussed above, each test group would have approximately 12.5% of total share volume each month.

[809] Table 2 in the baseline shows aggregate exchange share volume for July 2017 was 91.7 billion shares, of which 12.5% would be 11.5 billion shares. Further, the Commission estimates that these volume figures would be similar across all months, assuming no seasonality in share volume.

[810] If Test Group 2 has monthly share volume of 11.5 billion shares, and the margin would increase by $0.0028 ($0.0030—$0.0002), the revenue increase per month is estimated to be 11.5 billion × $0.0028 ≈ $32,200,000.

[811] As discussed in section IV.B.2.d, the net of rebate revenue for NYSE (NYSE, NYSE Arca, NYSE American, and NYSE National), Nasdaq (Nasdaq, BX, and PSX), and Cboe (Cboe BZX, Cboe BYX, Cboe EDGA, and Cboe EGDX), was $602 million during 2017 ($196M + $253M + $153M). If the estimated margin increased by $386.4 million, then the percentage increase in this margin would be $386.4 million/$602 million ≈ 64.1%.

[812] Consistent with this idea one commenter suggested that, any benefits or costs accruing to broker-dealers as a result of changes in fees and rebates are likely to be passed onto their customers. *See* Decimus Letter, at 2.

[813] *See supra* Section IV.B.2. and IV.D.2. (discussing the competitive environment for broker-dealer services). *But cf.* Decimus Letter, at 2–4; NYSE Letter I, at 13; ASA Letter, at 2 (noting the possibility that commissions would increase).

[814] *See* Decimus Letter, at 2–4.

[815] *See, e.g.,* Angel Letter II, at 3.

[816] *See, e.g.,* Citigroup Letter, at 3; Credit Suisse Letter, at 1; Decimus Letter, at 4; MFS Letter, at 1.

[817] *See, e.g.,* IEX Letter II, at 5; Credit Suisse Commentary, at 3.

[818] *See* Angel, Harris, & Spatt, *supra* note 530.

[819] *See also* TD Ameritrade Letter, at 3 (concurring with the view that the Pilot is less likely to affect highly liquid securities).

provide liquidity, but believes that the impact of this reduced incentive on quoted spreads and transaction costs could be positive or negative and could vary across securities. In particular, the Commission believes that despite a potential reduction in liquidity provision, some investors could actually experience lower or higher transaction costs in some securities for several reasons. Generally, this section provides reasons to expect an increase in transaction costs as well as reasons to expect a decrease in transaction costs. Likely, several of these effects will offset to create a new equilibrium, but the Commission cannot predict whether investors will face higher or lower transaction costs in this new equilibrium.

First, some commenters stated that the removal of rebates could cause some liquidity providers to stop providing liquidity, which would result in a temporary increase in transaction costs during the Pilot as the remaining liquidity providers would face less competition for their services and therefore could charge wider spreads to liquidity demanders.[820] One Commenter suggested that this effect could be seen by comparing spreads on non-rebate exchanges like Cboe EDGA with the rebate paying exchange Cboe EDGX. The Commenter noted that average spreads on Cboe EDGX tend to be lower than those on Cboe EDGA.[821] However, the Commission does not believe that this data point provides robust evidence that spreads will widen across all securities because EDGA and EDGX tend to trade securities with different characteristics, consistent with another commenter who stated that ''EDGA only traffics in the most liquid names'' consequently comparing average spreads on EDGA and EDGX is not appropriate. Additionally this analysis does not establish a causal link between rebates and quote quality.[822]

The Commission notes that a reduction in liquidity provision might not result in wider quoted spreads and greater transaction costs, particularly in more active securities. In particular, as suggested by some commenters, if rebates result in excessive intermediation,[823] or if ''natural'' buyers and sellers set quoted prices,[824] a reduction in rebates need not widen quoted spreads and increase transaction costs and could actually reduce transaction costs to the benefit of investors. Excessive intermediation makes it more difficult for non-market makers to get passive orders to the front of the queue and could induce them to cross the spread to trade aggressively a greater fraction of the time. If a reduction in rebates can result in less excessive intermediation, then a reduction in liquidity provision by market makers might not adversely impact transaction costs but could instead decrease queue lengths faced by non-market maker liquidity providers such as institutional investors. This could allow investors trading test group stocks to potentially experience better execution quality because they could be able to obtain better queue priority on their passive orders. Better queue priority would both diminish adverse selection costs for passive orders and also decrease the fraction of time investors are required to pay the spread and potential take fee to execute a trade.[825] The Commission does not have the data necessary to empirically analyze whether rebates indeed result in excessive intermediation, but expects the Pilot to facilitate such analysis.

The Commission recognizes the risk, noted by some commenters, that the Pilot could increase the cost of transacting if the reduction of rebates leads to a reduction in quoted depth.[826] If the reduction in rebates in test group securities results in liquidity providers such as market makers posting less displayed liquidity, quoted depth could decline even if quoted spreads does not decline. This lower depth could result in increased costs of transacting larger quantities. These effects could be more pronounced in small stocks if, as some commenters suggest, rebates are important to induce market makers to provide liquidity in small stocks either directly or through cross subsidization of liquidity.[827]

The Commission also recognizes the potential for a reduction in liquidity and an increase in transaction costs for ETPs and particularly less active ETPs. Multiple commenters expressed concern that the Pilot might particularly reduce liquidity in ETPs.[828] These commenters noted that, unlike in stocks, the Pilot might affect liquidity for ETPs in one of two ways: It may affect liquidity in shares of the ETP, or it may affect liquidity in the underlying assets of the ETP. The Pilot may reduce liquidity in the shares of the ETP if the reduction of or elimination of rebates induces market makers to stop or reduce providing liquidity for shares of an ETP. Moreover, another commenter expressed concern that the Pilot is inconsistent with exchanges programs for ETP market makers, whereby incentives are made available to market makers to act as liquidity providers for small, less liquid ETPs and therefore the negative impact of the Pilot could be the most pronounced among illiquid ETPs.[829] Additionally, the Pilot may affect the liquidity of ETPs if it impacts the liquidity of the underlying securities. If the Pilot affects liquidity in shares of an ETP or impacts the liquidity of the ETP's underlying securities, it will also affect the costs to authorized participants of eliminating ETP mispricing by participating in the create-redeem process.[830]

Additionally, the Commission recognizes that the Pilot might result in other unforeseen changes to market dynamics,[831] including improved or diminished execution quality by certain trading centers which could shift the level of market participation. Also, the Pilot may affect the ability of exchanges and ATSs to draw liquidity provision through innovative methods other than rebates. The effects of these changes may have a positive, neutral, or negative effect on liquidity. Consequently, the Commission believes that there is significant uncertainty surrounding the effects of the Pilot on liquidity.

(3) Conflicts of Interest

As noted above, the Commission is not certain of the extent to which some broker-dealers route investor orders to avoid fees or to capture rebates in such

[820] *See also* Pragma Letter, at 2; Magma Letter, at 2; STA Letter, at 3; STANY Letter, at 2; Morgan Stanley Letter, at 3–4; Energizer Letter, at 1.

[821] *See* NYSE Letter II, at 2, 9. *See also,* Nasdaq Letter III, at 4–6 (presenting similar data suggesting that quote quality on make-take exchanges is better than on inverted exchanges).

[822] *See* section IV.C.1.a.ii.(3) for a discussion on causality, *See* also Mulson Letter II, at 1.

[823] *See* NYSE Letter II, at 4 (noting that ''some institutions believe maker-taker pricing unnecessarily subsidizes quoting in sufficiently liquid securities, resulting in 'excessive intermediation' that crowds out long-term investor participation in the market.''). *See also* T. Rowe Price Letter, at 2.

[824] *See, e.g.,* Mulson Letter.

[825] *See* Pragma Letter, at 2; IEX Letter I, at 6; IEX Letter III, at 4–6. *But cf.* NYSE Letter II, at 11.

[826] *See* Pragma Letter, at 2; Nasdaq Letter I, at 6.

[827] *See* Nasdaq Letter I, at 8–9; Nasdaq Letter III, at 9. However another commenter suggested that the impact of the Pilot on small stocks would be mitigated by the fact that small stocks tend to have wider spreads, and thus rebates form a smaller fraction of total market making incentives. *See* Decimus Letter, at 4–5

[828] *See, e.g.,* ICI Letter I, at 4; BlackRock Letter, at 1–2; FIA Letter, at 4; SIFMA Letter, at 4; Issuer Network Letter I, at 3; Schwab Letter, at 3; Fidelity Letter, at 9; Invesco Letter, at 2; State Street Letter, at 3; Clearpool Letter, at 8; STA Letter, at 4; STANY Letter, at 4; Healthy Markets Letter II, at 8; Healthy Markets Letter I, at 11; Nasdaq Letter I, at 8; NYSE Letter I, at 7; Cboe Letter I, at 17; Credit Suisse Commentary, at 6; Morgan Stanley Letter, at 3–4.

[829] *See* Virtu Letter, at 7.

[830] *See infra* Section IV.D.1.

[831] *See* IEX Letter II, at 7.

a way that reduces execution quality. To the extent they do, the Pilot could improve execution quality. This would occur if, as many commenters and studies have argued, the offering of rebates produces a conflict of interest that induces orders to be routed to exchanges with sub-optimal execution quality.[832] Consequently, the removal or reduction of rebates may cause orders to be routed to exchanges with better execution quality and the execution quality in the stocks in the Test Groups could improve. As noted above, commenters disagreed on whether broker-dealers act on such conflicts of interest and the Commission lacks sufficient information to determine the magnitude of any such conflicts. The Commission notes that the objective of the Pilot is, in part, to study such conflicts of interest.

(4) Cost Estimates

Multiple commenters provided quantitative cost estimates associated with expected changes in liquidity. The commenters' estimates all rely on the assumption that a reduction in rebates will increase quoted spreads and transaction costs but took different approaches, resulting in a wide range of estimates from $24 million to $4 billion per year. Overall, while the Commission appreciates the cost estimates, the Commission reiterates that the Pilot could either increase or decrease investor transaction costs for the reasons explained above. However, for the reasons discussed below, the Commission believes that each of the commenters overestimated the potential costs to investors. Below, the Commission first describes each estimate, adjusts the estimate for the change in the structure of the Pilot and then discusses how the assumptions might affect the estimation.

The first commenter estimated costs of $24 million per year. Across all three proposed test groups, this commenter calculated an anticipated reduction in the average rebate of $0.002267 per share, and that approximately 50% of all liquidity providers will be affected by the rebate reduction by ''updating their quotes to less aggressive prices,'' leading to an increased cost to cross the spread of $0.001134 per share.[833] Assuming only stocks with an average quoted spread in excess of $0.02 will be adversely affected by the rebate reduction, this commenter estimated that the costs to its customers of a wider quoted spread would be $24 million annually.[834]

To account for the changes to the Pilot since the proposal, Commission staff estimate that this commenter's approach would estimate a cost of $12.7 million per year. To arrive at this estimate, the Commission adjusted the average rebate reduction to 0.0024 to account for the change to the test groups and adjusted the average implied volume to account for the inclusion of less than half the number of stocks in test groups.

Despite these adjustments, the Commission notes that the estimate is likely imprecise. In particular, this estimate relies on an assumption that the spreads will widen by 50% of the reduction in rebates but does not provide support for this assumption. The commenter does not explain why they expect this relation between rebates and liquidity or provide an explanation for why they feel that 50% is the appropriate adjustment to use. Further, this adjustment does not allow for some liquidity demanders to supply liquidity more often if queue lengths decline with rebates. Such a switch would reduce the impact on transaction costs. The commenter also does not explain whether the share volume used to estimate the costs was all share volume in securities with average quoted spreads of less than two cents or just that portion likely to be in a test group. If the commenter included all volume, the estimates would be closer to $6.34 million.

A second commenter estimated that if effective spreads widened by 10% for the 100 top securities, ''the Pilot could conservatively cost investors over $400 million more in annual execution costs.'' [835] The commenter does not provide an analysis, either quantitative or qualitative, to support their belief that a 10% increase is appropriate to use or explain their methodology. The commenter provided little information about its assumptions or underlying data that would allow the Commission to examine the robustness of the estimate or to adjust the estimate for the changes in the Pilot since the proposal. As such the best way for the Commission to adjust the estimate for the changes in the Pilot is to divide it by two, $200 million, because the changes reduced the number of securities in the Pilot by slightly more than half. However, because of uncertainties about methodology and assumptions, the Commission cannot adjust with any certainty the $400 million estimate and does not believe that a $200 million estimate is reliable. The Commission recognizes that the changes to the Pilot could also change the commenter's estimate of how much spreads widen.

A third commenter provided an analysis that suggested that, due to wider spreads, the increased costs to investors would be at least $1 billion per year and potentially $4 billion.[836] Like the first commenter, this $1 billion estimate assumes an adjustment to transaction costs based on the reduction in the rebate, except that this commenter doubled the rebate to adjust transaction costs. To compute their estimate, the commenter estimates the weighted reduction in rebates across all stocks, taking into account the fact that most stocks will see no change in rebates. The commenter then uses the expected weighted average reduction in rebates to compute their estimate for the Pilot's impact on average spreads across all stocks. The commenter then multiplies the expected impact on spreads by total trading volume to arrive at a total of approximately $1 billion in estimated costs per year.[837] Using the commenter's method, the adopted rule would have an average rebate reduction of approximately $0.0004, which would widen spreads by $0.0009, or approximately half the prior increase, for a new cost estimate of $600 million per year.

Other commenters responded to this commenter's $1 billion estimate in various ways. One commenter criticized the use of quoted spreads to estimate costs.[838] Likewise, several commenters

[832] *See* Section III.A.

[833] *See* TD Ameritrade Letter, at 3.

[834] *See id.*

[835] Cboe Letter I, at 3.

[836] *See* NYSE Letter I, at 13 and NYSE Letter IV, at 4. The commenter estimated the $1 billion increase in expected costs by computing a new consolidated spread, equal to the current consolidated spread + (rebated reduction × 2), where the rebate reduction is the blended average fee change of $0.00082, and multiplied this rebate reduction by 2 as market makers on both sides of the quote will adjust to reflect the rebate reduction. The commenter indicated that this estimation results in a 1.1% increase in average spreads to 28.1 bps. *Id.* at Addendum 4–5. For principal trades, the anticipated increase in costs as calculated by this commenter is the cost to cross the wider spread netted against lower access fees, while for agency trades, the costs equal the cost to cross the new wider spread. The commenter showed, ''on net, an estimated cost of $1.08bn to the industry, of which $721MM would be incurred by agency flow.'' *Id.* at Addendum 5. *See also* STANY Letter, at 2.

[837] The Commenter adjusts their estimate to account for agency verses principle flow using the following formulas. Agency cost = Change in Spread*1/2 * Market Notional Value * Agency Share; Principal Cost = [Change in Spread*1/2 * Market Notional Value * Principal Share]—[Fee Reduction * Market Volume * Principal Share * Maker/Taker Venue Share].

[838] *See* IEX Letter II, at 6. ''Given that institutional investor orders are typically far larger than [the quoted spread], and retail investor orders are generally executed off-exchange,'' the quoted spread is ''particularly relevant'' in ''cases where a

suggested that the commenter's estimates of potential harm are overstated by as much as 90%.[839]

The Commission views the commenter's $1 billion estimate as likely overstating the realistic costs associated with the Pilot should it result in increased spreads. One reason the estimate may be overstated is that, as some commenters have noted, and as discussed in section IV.C.2.b.iv.(1), the Pilot might have a diminished impact on penny constrained securities. In a supplemental analysis using TAQ data from the last quarter of 2017 and the first two quarters of 2018, the Commission estimates that between 50–70% of share trading volume occurs in stocks that are penny constrained.[840] Consequently, to the extent that rebates play a diminished or no role in determining the spread of penny constrained stocks the commenter's estimates will significantly overstate the impact of increased spreads on transaction costs. Also, the commenter's estimate assumes that spreads will widen by twice the reduction in rebates, an assumption that some commenters question and that the Commission views as a likely upper limit to the impact of the Pilot on quoted spreads.[841] This assumption does not take into account that non-market makers may begin to provide liquidity more often during the Pilot in securities with lower or no rebates due to a potential decrease in intermediation by market makers, which may mitigate the impact of less intermediation by market makers as a result of lower rebates.[842] Consequently, the Commission acknowledges that to the extent that the Pilot impacts spreads in a certain small number of test group stocks, this could engender costs to investors. However, as described above, the Commission believes that the estimate of $1 billion per year is likely a significant overstatement of the actual costs that would be incurred in such a scenario.[843]

The commenter's $4 billion estimate is based on the comparison between the spreads on a maker-taker exchange compared to the spreads on a taker-maker exchange described above in Section IV.C.2.b.iv(2), which the Commission views as even more imprecise than the $1 billion estimate for the reasons laid out above. Beyond the concerns expressed in Section IV.C.2.b.iv(2), the Commission notes that the difference between the spreads of a maker-taker exchange and a taker-maker exchange would result from the difference between the fee paid to post an order and the rebate to post. As such, the implied impact of no rebates would be no more than ½ the spread difference. Thus, thus using the full spread difference overstates costs by a factor of 2. Further, to get the $4 billion estimate, the commenter applied the spread differential to all NMS securities. Because Test Group 2 will be only about 12.5% of securities, applying the spread differential to all NMS securities overstates the cost by a factor of 8. In sum, using the commenter's approach, but correcting for these issues, would yield a cost 16 times smaller than the commenter's, or $125 million.

v. Impact on Issuers

Several commenters expressed concerns that adverse effects to liquidity could induce long-term costs, such as higher costs of capital for issuers subject to certain Test Groups where the incentives to provide liquidity are reduced, likely affecting small and mid-capitalization issuers most severely.[844] One commenter believed that issuers would have higher costs of capital as a result of wider spreads, making any attempts to raise capital more expensive, particularly for issuers in certain Test Groups of the Pilot.[845] Additionally, a number of commenters also expressed concern that wider spreads due to a reduction in rebates could also adversely affect issuers that engage in share repurchase programs.[846]

The Commission addresses these comments in the capital formation analysis in Section IV.D.3 and concludes that the Pilot is not expected to have a large impact on issuer cost of capital. While the Commission acknowledges the risk that the Pilot may impact liquidity for some securities, as explained above, the Commission believes that the impact of such an effect on the cost of capital for such securities would likely be minimal.[847]

With the exception of the impact on cost of capital, one commenter stated that the Pilot will require burdensome expenditures by public companies at the start and conclusion of the Pilot.[848] The Commission recognizes that some national securities exchanges and broker-dealers are public companies that could incur the costs described in Sections IV.C.2.a and IV.C.2.b.ii at the start and conclusion of the Pilot. However, the commenter did not provide details on what expenditures other public companies will incur as a result of the Pilot. The Commission does not know what such expenditures would be or what they would entail; nevertheless, we do not believe that there will be any such expenditures.

vi. Costs to Broker-Dealers of Reverse Engineering Identities in the Order Routing Data

Some commenters expressed concern that proposed public dissemination of order routing information would enable competitors to gain proprietary information regarding trading strategies.[849] The commenters suggested

market participant is attempting to buy or sell, on an exchange, fewer shares than the total amount displayed at the [NBBO][.]'' *Id.* NYSE responded to this comment by noting that nearly all trading on exchange is for amounts smaller than the quoted depth, so the quoted spread is relevant. *See* NYSE Letter II, at 10.

[839] *See, e.g.,* IEX Letter II, at 4; Healthy Markets Letter II, at 2 (arguing that the NYSE cost estimate to investors of $1 billion has been ''sufficiently debunked as purely fictional''); Decimus Letter, at 4 (arguing that the NYSE approach ignores potential indirect benefits to market participants of lower access fees (and possibly lower brokerage commissions), and that the Pilot would provide the information necessary to obtain meaningful analysis of changes to fees and rebates on order routing decisions and execution quality).

[840] To determine if a stock is penny constrained, the Commission applied the simple filter: If the stock's trade weighted quoted spread was less than 1.1 cents, then the stock was considered penny constrained. This threshold yielded approximately 50% of trading volume occurring in stocks that are penny constrained. If the threshold is lifted to 2 cents (implying that at least some of the time the stock was penny constrained), then the fraction of trading volume in penny constrained stocks rises to 70%. Note that the sample period for the supplemental analysis is during the Tick Size Pilot. As such, these figures could underestimate the percentage of volume in penny constrained securities.

[841] *See* Section IV.2.b.iv.(1).

[842] One assumption made by NYSE is that ''a reduction in the average passive rebate. . .will result in both the bid and offer being backed off, on average, by the exact same amount as the rebate reduction.'' However, as another commenter argued this ''assumes that only rebate driven liquidity providers set the quote'' when ''in reality the quote is almost always set by natural investors, who have a view of fair price, that is informed by both fundamental and quantitative research as well as the likely impact of their own short term trading intentions. *See* Mulson Letter, at 1. As discussed earlier in this section, the many potential effects of rebates on quoted spreads create significant uncertainty. *See* also Decimus Letter, at 4; Mulson Letter, at 1; IEX Letter II, at 4. NYSE responded to these comments by noting that even if their volume estimates are overstated by 20%, the cost is still significant and suggesting that investors would not provide liquidity because doing so would increase leakage costs. *See* NYSE Letter II, at 10–11.

[843] *See* Mulson Letter I, at 1 and IEX Letter II, at 4.

[844] *See* NYSE Letter I, at 3, 13–14; ASA Letter, at 3; *e.g.,* Level Brands Letter, at 1; Johnson Letter, at 1; P&G Letter, at 1; Sensient Letter, at 1; Apache Letter, at 2; Ethan Allen Letter, at 1–2.

[845] *See* NYSE Letter I, at 3 and section IV.D.3 for further discussion of NYSE's cost of capital estimates.

[846] *See, e.g.,* Apache Letter, at 2; ACCO Letter, at 1; NorthWestern Letter, at 2; Weingarten Letter, at 1.

[847] *See* section IV.D.3

[848] *See* Nasdaq Letter I at 10.

[849] *See, e.g.,* FIA Letter, at 3; Virtu Letter, at 7–8; SIFMA Letter, at 6; FIF Letter, at 2; Citadel Letter,

Continued

that, for example, market participants could learn the identities of individual broker-dealers by sending a specific broker-dealer an order for a relatively thinly-traded security and then study the order routing reports to identify which broker-dealers transacted that security on a given day. The concern is that if market participants can identify the primary venues that certain broker-dealers tend to rout to, then they may be able to use this information along with live market data to identify specific trading algorithms of individual broker-dealers. This could increase transaction costs for broker-dealers if the market participants are able to use this data to identify when a certain algorithm is being used to execute a trade in live time and then to opportunistically trade around the algorithm to profit from any price impact created by the trades.

As described above, the Commission has modified its proposal in response to these comments. Consequently, the Commission is not adopting the requirement that exchanges publicly post the order routing datasets and instead the Commission will receive the order routing data. This change significantly reduces the risks identified by the commenters about reverse engineering, and the Commission is sensitive to the need to protect the data from unauthorized disclosure.

D. Impact on Efficiency, Competition, and Capital Formation

The Commission has considered the effects of the Pilot on efficiency, competition, and capital formation.[850] As discussed in further detail below, the Commission believes that many of the direct effects of this rule on efficiency, competition, and capital formation would likely be temporary in nature and affect markets only for the duration of the Pilot. The Commission believes that the information obtained as a result of the Pilot could improve regulatory efficiency, because analyses of this data are likely to provide a more representative view of the effect of transaction-based fees on order routing decisions than would be available to the Commission in the absence of the Pilot. Further, the Pilot may have a number of temporary effects on price efficiency, the competitive dynamics between exchanges, exchanges and off-exchange trading venues, broker-dealers, and issuers, including ETPs. Although the Pilot may temporarily affect liquidity,[851] the Commission does not believe that this will result in the Pilot having a significant effect on capital formation. One commenter believed that the Commission did not sufficiently address the impacts of the Pilot on efficiency, competition, and capital formation in the proposing release.[852] Several other commenters stated that the Commission inadequately provided justification for the assertions in the proposing release that the effects on efficiency, competition, and capital formation would be temporary in nature and ''would affect markets only for the duration of the [proposed] Pilot.'' [853] The Commission addresses below commenters' concerns about issues stemming from efficiency, competition, and capital formation.

1. Efficiency

This section discusses the potential impact the Pilot could have on efficiency. The Commission believes that information learned from the Pilot could potentially improve future regulatory efficiency. Additionally, the Commission believes that the Pilot could have a number of temporary impacts on efficiency, including: The efficiency of capital allocation, price efficiency and price discovery, and the efficiency of fees and rebates.

As discussed in detail above,[854] the Commission believes that there is significant uncertainty regarding the effect, if any, that the Pilot will have on liquidity and trading volume on exchanges. Therefore, the Commission is unable to determine *ex ante* the overall effects the Pilot will have on the efficiency of capital allocation, price efficiency, or the efficiency of fees and rebates.[855] However, the Commission believes that the Pilot will provide useful data that will better inform future policy recommendations of the effects of fees and rebates on price efficiency.[856]

The Pilot will provide the Commission with an opportunity to empirically examine the effects of an exogenous shock to transaction fees and rebates on order routing behavior, execution quality and market quality. Insofar as the data produced by the Pilot permits the Commission and the public to evaluate and comment upon the potential impacts of alternative policy options, the rule may promote regulatory efficiency.[857] In the absence of the Pilot, the Commission would have to rely on currently available data to inform future policy decisions related to transaction-based fees and rebates and data limitations may impair the efficiency of policy decisions based on this information.[858]

The temporary efficiency impacts the Commission expects during the Pilot depend on how the Pilot fee and rebate restrictions for the two Test Groups balance the interests of different groups of market participants. For example, if during the Pilot, the lower fee cap and no-rebate restriction induced by the Pilot cause broker-dealers to be more likely to route customer orders to trading centers with better pricing, higher speed of execution, or higher probability of execution, rather than to trading centers with the largest rebates,[859] the Pilot may temporarily improve the efficiency of capital allocation by lowering execution costs.[860] Alternatively, the efficiency of capital allocation could be reduced if, as a response to the loss in revenue from rebates, broker-dealers increase commissions or fees charged to customers.[861] Higher commissions or fees could reduce customers' willingness to trade or could lead to a lower injection of capital into the markets by investors because a larger fraction of each investable dollar would go to compensate broker-dealers for the lost revenue. However, because rebates are generally accompanied by higher transaction fees, the overall costs to broker-dealers to route orders to exchanges could decline for some Test Groups, which could lead to a decrease in commissions or fees and temporarily

at 4; Citi Letter, at 6; TD Ameritrade Letter, at 5; STANY Letter, at 5; IEX Letter I, at 10; Credit Suisse Commentary, at 6; Morgan Stanley Letter, at 4.

[850] Exchange Act Section 3(f) requires the Commission when engaging in rulemaking to consider or determine whether an action is necessary or appropriate in the public interest, and to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[851] *See supra* Section IV.C.2.b.iv.

[852] *See* Nasdaq Letter I, at 3, 8. This commenter expressed concern that the Proposal did not considered the effects on issuers and ETPs. *See id.,* at 8. This commenter also stated that ''the Proposal is a blunt tool lacking nuance that will negatively affect efficiency, competition, and capital formation—none of which have been adequately addressed by the Commission.'' *See id.*

[853] *See* NYSE Letter I, at 15–16. *See also, e.g.,* Level Brands Letter, at 1; Johnson Letter, at 1; Knight-Swift Letter, at 1.

[854] *See supra* Sections IV.C.2.b.i and IV.C.2.b.iv.

[855] One commenter stated that it did not ''expect that a reduction or outright removal of rebates will have any significant or harmful effects on the quality of prices displayed in the public lit market, interfere with genuine liquidity and price formation, or negatively impact [its] stock's trading volume, spread or displayed size.'' *See* T. Rowe Price Letter, at 5.

[856] *See supra* Section IV.C.1.a.ii.

[857] *See supra* Section IV.C.1.a.i for a discussion of the potential benefits from studying the Pilot data and *supra* Section IV.C.1.a.iii for a discussion of the potential limitations of studying the Pilot data.

[858] *See supra* Section IV.B.1.b.

[859] *See supra* Section IV.C.1.b.

[860] *See supra* Section IV.C.2.b.iv.

[861] *See supra* Section IV.C.2.b.iii.

increase the efficiency of capital allocation.

For the duration of the Pilot, lower transaction fees could improve the liquidity of stocks and ETPs in some Test Groups by reducing the costs to execute marketable orders.[862] As marketable orders become less costly, these orders are likely to be routed to exchanges with lower transaction fees, improving execution quality and possibly creating a liquidity externality,[863] whereby lower transaction fee venues will become the preferred trading center for marketable and non-marketable orders.[864] An increase in liquidity could improve informational efficiency by allowing securities prices to adjust more quickly to changes in fundamentals.

As a result of the Pilot, price efficiency might also improve; quoted spreads also may more closely reflect the net cost of trading and could temporarily increase price transparency for securities in certain test groups.[865] Currently, most broker-dealers do not relay information about amounts of fees paid or rebates received on trades to their customers, thereby limiting the transparency of the total costs incurred to execute a trade. The Pilot would not mandate disclosure by the exchanges or the broker-dealers of order-level transaction-based fees and, therefore, will not resolve the limitations to transparency of the total fees paid and rebates received by broker-dealers for particular orders. As fees decline or rebates are removed in some Test Groups, however, the deviation in the net cost of trading from the quoted spread could shrink, thereby at least partially improving price transparency for the duration of the Pilot, and temporarily improving pricing efficiency and price discovery.[866] Therefore, as an additional benefit of the Pilot, the Pilot will allow an examination of the temporary effect of revisions to transaction fees and rebates on quoted spreads, to better inform future policy recommendations of the effects of exchange transaction-based fees and rebates on price efficiency.[867]

On the other hand, if the reduction in rebates and Linked Pricing harms liquidity,[868] or causes more informed order flow to be routed to off-exchange trading venues,[869] then the Pilot may temporarily impair price efficiency and the price discovery process.[870] A reduction in rebates could cause informed traders to route more of their non-marketable orders to off-exchange trading venues, which could reduce price discovery, because these orders would no longer be included in displayed quotes or limit order book depth. If liquidity temporarily worsens, then it may lead to a temporary widening of the NBBO, which could lead to a decline in the overall informational efficiency of prices. If liquidity worsens, it could also cause informed traders to route more of their marketable orders off-exchange, which could harm price discovery by reducing the ability of market participants to discern the direction of their order flow. However, if spreads widen or queues shorten, it could attract informed non-marketable orders onto exchanges, which could improve price discovery, because exchange quotes would be more informative. Because the Commission cannot *ex ante* predict the effects of the Pilot on liquidity and competition between exchanges and off-exchange trading venues for order flow,[871] the Commission is unable to determine the overall effects of the Pilot on price efficiency and the price discovery process.

Changes in liquidity could also impact the price efficiency of ETPs. A change in liquidly for either the ETP itself or the underlying securities could impact the create-redeem process for ETPs. This process is an important element in ETP price efficiency and helps to keep the price of the ETP in line with the value of its underlying securities. If there is a mispricing, authorized participants can trade on the mispricing by either purchasing the underlying shares to create a share of the ETP, or by redeeming a share of the ETP and selling the assets underlying the ETP. These actions affect the existing supply of ETP shares and help to eliminate mispricing. Consequently, if the Pilot impacts liquidity in either the underlying assets, or the ETP itself, it will impact the cost to authorized participants of eliminating mispricing by participating in the create-redeem process. Since the Commission does not *ex ante* know how the Pilot will impact liquidity,[872] it cannot quantify the effects of the Pilot on ETP price efficiency. If the Pilot results in improved liquidity for the stocks in the various Test Groups, or for the ETP itself, then its impact on the create-redeem process may be positive and ETP price efficiency may increase as its value may more closely track the value of their underlying assets through a lower cost create-redeem process. The opposite is true if the Pilot negatively affects liquidity in either the ETPs or the underlying securities.

Finally, the Commission acknowledges that the fee caps and prohibition on rebates or Linked Pricing imposed on the Test Groups during the Pilot further constrain the exchanges' abilities to strategically choose fee and rebate schedules and for some NMS stocks may restrict the fees and rebates further beyond the current levels, which could be less efficient from the exchanges' perspective. The rule could temporarily result in more or less efficient fee and rebate schedules because the exchanges might not be able to optimize their pricing structure for some Test Groups of securities.[873] While the Commission does not currently have information to determine the current level of efficiency of fees and rebates, the information that the Commission and the public receive from the Pilot could enable the analysis of market impacts stemming from changes to fees, potentially permitting the Commission to assess alternative requirements for transaction-based fees and rebates that may be more efficient.

Several commenters asserted that fee and rebate restrictions proposed by the Commission would be government imposed price-controls that would increase inefficiencies and harm consumers.[874] One of these commenters elaborated that ''Government-imposed price controls are well understood to have a negative impact on competition and innovation'' and that ''they are only

[862] *See supra* Section IV.C.1.b.

[863] As discussed in detail above, improvements in execution quality could present as better prices for execution, higher probability of execution, and faster time to execution. *See supra* Section IV.C.2.b.iv.

[864] *See infra* Section IV.D.2.b.

[865] *See supra* Section IV.C.1.b.

[866] Some commenters argued that transaction fees and rebates harm price transparency because the prices displayed by exchanges do not include fee or rebate information and therefore do not fully reflect net trade prices. *See* ICI Letter I, at 2; Goldman Sachs Letter, at 3; Invesco Letter, at 2; State Street Letter, at 2; Wellington Letter, at 1; Oppenheimer Letter, at 2; Capital Group Letter, at 3; Citi Letter, at 2. A number of academic studies also made this argument. *See, e.g.,* Angel, Harris, & Spatt, *supra* note 530, and Harris, *id.*

[867] *See supra* Section IV.C.1.a.ii.

[868] *See supra* Section IV.C.2.b.iv.

[869] *See infra* Section IV.D.2.a.

[870] Some commenters argued that rebates improved price discovery by promoting displayed liquidity on exchanges and narrowing the NBBO. *See, e.g.,* State Street Letter, at 2; Virtu Letter, at 3; Magma Letter, at 3; Schwab Letter, at 1; Fidelity Letter, at 3; Cboe Letter I, at 15–16. One commenter argues that the removal of rebates could harm price discovery by causing more market participants to route their orders to off-exchange venues, instead of lit exchanges, where they would be included in the price discovery process. *See* Nasdaq Letter I, at 2, 4.

[871] *See supra* Section IV.C.2.b.iv and *infra* Section IV.D.2.a.

[872] *See supra* Section IV.C.2.b.iv.

[873] *See supra* Section IV.C.2.b.i.

[874] *See* Nasdaq Letter I, at 2, 5; Cboe Letter I, at 7.

indicated where they overcome severe market imperfection such as monopoly ownership of a critical resource.'' [875] As discussed in detail above,[876] the Commission believes that the current fee and rebate system may have resulted in a number of market failures, including rebates incentivizing brokers to route orders to trading venues that pay the highest rebates, instead of the venues that offer better execution. However, the Commission currently lacks the data to estimate the extent of any existing market failures.[877] While the Commission acknowledges that the Pilot's restrictions on rebates and fees could potentially harm efficiency, if these market failures currently do exist, then the fee and rebate restrictions in Test Group stocks could temporarily improve efficiency for the duration of the Pilot. Additionally, the information the Commission learns from the Pilot could be used by the Commission in future rulemakings to inform future policy decisions.[878]

2. Competition

This section discusses the potential effects of the Pilot on competition. The Commission believes that the Pilot could have a temporary effect on the competitive dynamics between exchanges, exchanges and off-exchange trading venues, broker-dealers, and issuers, particularly ETPs. Additionally, as discussed in detail below,[879] the Pilot could potentially have competitive effects for smaller exchanges that last beyond the Pilot. This could occur if the Pilot attenuates the potentially distortive impact of transaction-based fees and rebates and causes broker-dealers to route orders to trading centers they perceive as more liquid. This could have a lasting effect on the order flow and revenue of smaller exchanges if it produces a liquidity externality that persists beyond the Pilot.[880] However, the Commission believes that this is unlikely to occur, because the Pilot would be for a limited duration and the effects are unlikely to be significant enough to cause this result.[881]

Because the Commission is unable to determine *ex ante* the Pilot's effects on liquidity,[882] the Commission is unable to quantify many of the effects of the Pilot on competition. In the sections below the Commission offers a qualitative discussion of the effects of the Pilot on competitive.

a. Competition Between Exchanges and Off-Exchange Trading Venues

This section discusses the potential effects of the Pilot on competition between exchanges and off-exchange trading venues, including ATSs, which, as discussed in the baseline,[883] execute approximately 14% of trading volume. Although the Pilot could temporarily affect the competition for order flow between exchanges and off-exchange trading venues, the Commission believes that the overall effects of the Pilot on this competition are unclear, because, as discussed in detail below, there are reasons why the Pilot may temporarily increase as well as decrease the order flow routed to off-exchange trading venues.

A number of commenters argued that restricting exchange rebates and fees for stocks in the test Groups without placing similar restrictions on off-exchange venues could place exchanges at a competitive disadvantage.[884] Although the Commission acknowledges that the Pilot may potentially place exchanges at a competitive disadvantage relative to off-exchange trading venues, the Commission believes that the overall effects of the Pilot on this competition would depend on how on-exchange liquidity is affected by the Pilot as well as the renegotiation costs that off-exchange trading venues would incur in order to take advantage of the restrictions on exchange fees and rebates. For example, as discussed in detail above,[885] ATSs sometimes negotiate bespoke agreements with individual subscribers for a bundle of services. If the costs of renegotiating these agreements are high, then off-exchange trading venues may not be able to adjust their pricing models to take advantage of the exchange pricing restrictions, in which case competition between exchanges and off-exchange venues could be unaffected.[886] Additionally, as discussed below, if off-exchange renegotiation costs are high, some of the restrictions on transaction fees could give certain exchanges a competitive advantage relative to off-exchange venues in attracting certain types of order flow. However, if off-exchange renegotiation costs are small or the Pilot fee and rebate restrictions place certain exchanges at a disadvantage relative to the current pricing policies of some off-exchange trading venues, then the Pilot could affect competition between exchanges and off-exchange trading venues.

Although the Commission acknowledges that the distribution of trading volume could change between exchanges and off-exchange trading venues, the Commission believes these changes are difficult to determine in advance and cannot predict *ex ante* whether these changes would increase or decrease exchange market share.[887] As discussed above,[888] the Commission lacks data on the current pricing schedules offered by off-exchange venues as well as information on how this affects the routing decisions of broker-dealers. The Commission also lacks information on how difficult it is for off-exchange trading venues to adjust their pricing schedules. Additionally, as discussed above,[889] the Pilot's effects on liquidity could be either positive or negative and vary across securities. Therefore, the Commission is unable to quantify or determine the overall effects that the Pilot will have on competition between exchanges and off-exchange trading venues. However, if competitive rebalancing among trading centers occurs as a result of the Pilot, it could provide information to the Commission about order routing decisions and execution quality to inform future policy actions.

Commenter statements regarding the effects of the Pilot on competition between exchanges and off-exchange trading venues indicated that the Pilot could have different effects on the competition for marketable and non-marketable order flow. In considering the comments, and as analyzed in the following sections, the Commission considered the differential impact

[875] *See* Nasdaq Letter I, at 11–12.

[876] *See supra* Section IV.A.

[877] *See supra* Section IV.B.1. and Section IV.C.1.a.iii.

[878] *See supra* Section IV.C.1.a.

[879] *See infra* Section IV.D.2.b (Competition Between Exchanges).

[880] *See* Proposing Release, *supra* note 2, at 13042, for a discussion of a liquidity externality.

[881] *See infra* Section IV.D.2.b (Competition Between Exchanges).

[882] *See supra* Section IV.C.2.b.iv.

[883] *See supra* Section IV.B.2.a.

[884] Commenters expressed concern that the Pilot would inhibit exchanges' ability to compete with off-exchange trading centers, in part due to a reduced ability to innovate on changes to fees and rebates. *See, e.g.,* Cboe Letter I, at 7, 16–17; Nasdaq Letter I, at 6; NYSE Letter I, at 1–2, 4–5; Magma Letter, at 2; FIA Letter, at 3–4; ASA Letter, at 3; P&G Letter, at 1; ACCO Letter, at 1; Johnson Letter, at 1.

[885] *See supra* note 47 and accompanying text.

[886] It might be difficult for an ATS to renegotiate these agreements with all of their clients in order to take advantage of the exchange price restrictions on a subset of securities (*i.e.,* stocks in the Test Groups).

[887] One commenter agreed and stated the Pilot could cause a shift in the balance of activity between exchanges and off-exchange trading centers, but that the direction of such a shift cannot be presupposed. *See* Decimus Letter, at 5. This commenter also noted that transaction-based fees are one of the drivers behind the current shift by market participants to off-exchange trading centers. *Id.* at 5–6.

[888] *See supra* Section IV.B.1.b.vii.

[889] *See supra* Section IV.C.2.b.iv.

changes in exchange fees and rebates could have on the competition between exchanges and off-exchange trading venues for marketable and non-marketable order flow. As the discussion above indicates, and as commenters point out, it is not clear how the Pilot will affect the competition for both marketable and non-marketable order flow.[890] Additionally, since the impacts of the Pilot on liquidity may not be uniform across all securities,[891] the effects of the Pilot on competition for marketable and non-marketable order flow may not be uniform across all securities. Therefore, as discussed above, the Commission is unable to quantitatively estimate how the Pilot could affect competition between exchanges and off-exchange trading venues to attract different types of order flow. In the sections below the Commission offers a qualitative discussion regarding how various effects of the Pilot could affect this competition.

i. Marketable Order Flow

The Pilot could increase or decrease the share of marketable order flow routed to off-exchange trading venues. This is reflected in the divergent views of commenters, who argue over the effects that reduced access fees and rebates could have on the share of marketable order flow routed to off-exchange trading venues. In considering these comments, the Commission considered a number of ways the Pilot could potentially impact competition for marketable order flow, including: The impact of changes in liquidity, the direct impact of changes in access fees and rebates, the impact of changes in off-exchange fill rates, and the impact of the Order Protection Rule.

Changes in liquidity caused by the Pilot could affect how much marketable order flow is directed to off-exchange trading venues. However, because the overall effects of the Pilot on liquidity could be positive or negative and vary across securities,[892] the overall effects of changes in liquidity on the direction of marketable order flow are also unclear. Therefore, the Commission is unable to predict the overall effect that changes in liquidity caused by the Pilot will have on the competition for marketable order flow between exchanges and off-exchange trading venues.

A number of commenters argued that if the Pilot temporarily decreases liquidity in the test Groups due to the elimination or reduction of rebates,[893] more order flow will likely be directed to off-exchange trading venues.[894] As the Commission previously discussed,[895] the competition between on and off exchange venues for order flow is characterized as providing a tradeoff between immediacy and execution quality. Off exchange venues tend to get better trade execution on average than lit exchanges, largely because they trade between the prevailing NBBO, but at the cost of not being able to guarantee that a transaction will occur. Thus, the impact of the Pilot on the competition between exchanges and off exchange venues for marketable order flow will depend on how the Pilot impacts execution quality and the cost of immediacy on exchanges compared to the potential for price improvement and the chance of filling an order at an off-exchange venue.

If a reduction in rebates causes quoted spreads to widen,[896] it could increase the attractiveness of off-exchange price improvement and would likely cause more institutional or proprietary marketable order flow to be directed to off-exchange ATSs. Additionally, if spreads widen, broker-dealers would likely be incentivized to internalize more marketable institutional order flow. If spreads do not widen, a decrease in quoted depth could also result in more marketable orders being routed off-exchange. If quoted depth decreases,[897] and if market participants believe that off-exchange venues offer improved execution, it could cause more large marketable orders to get routed to ATSs or be internalized, in order to avoid the increased costs of walking up the book. Alternatively, if liquidity improves, it could reduce the cost of immediacy and the benefits of off-exchange price improvement, which could result in more marketable order flow being routed to exchanges.

Changes in exchange access fees and rebates for stocks in the test groups could also directly affect whether some types of marketable order flow are routed to exchanges or off-exchange trading venues. However, as discussed in detail above,[898] the Commission currently faces limitations in determining the effects that exchange transaction fees and rebates have on order routing decisions. The Commission is unable to quantify how changes in exchange transaction fees and rebates for stocks in the test groups will affect the routing decisions for marketable order flow between exchanges and off-exchange trading venues. Therefore, the Commission is unable to determine in advance what effect changes in exchange transaction fees and rebates caused by the Pilot will have on the competition for marketable order flow. One of the goals of the Pilot is to provide the Commission with data so that it can better evaluate these effects.

If renegotiation costs are too high for off-exchange trading venues to adjust their pricing schedules, lower transaction fees on maker-taker exchanges could cause some marketable order flow that would be routed to ATSs and other off-exchange trading centers to instead be routed to these exchanges. For example, if the equilibrium transaction fee in Test Group 2 is below $0.0030 in the absence of rebates, exchanges may be able to draw order flow away from off-exchange trading centers.

Several commenters agreed that lower access fees could induce some market participants to bring order flow back to exchanges.[899] One of these commenters stated that ''the potential that substantially lower take fees in test group securities will counter any potential loss of rebate-driven volume.'' [900] One commenter disagreed and noted that lowering fees would not attract marketable order flow to exchanges.[901] This commenter noted

[890] *See* Decimus Letter, at 5–6.

[891] *See supra* Section IV.C.2.b.iv.

[892] *See supra* Section IV.C.2.b.iv.

[893] *See id.*

[894] *See, e.g.,* Magma Letter, at 2; Home Depot Letter, at 1.

[895] *See* Securities Exchange Act Release No. 76474 (Nov. 18, 2015), 80 FR 80998 (Dec. 28, 2015), 81116–81117. *See also* Securities Exchange Act Release Nos. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018), 38891–38892.

[896] *See supra* Section IV.C.2.b.iv.2.

[897] *See id.*

[898] *See supra* Section IV.B.1.a and Section IV.B.1.b.

[899] *See, e.g.,* IEX Letter II, at 7, 8–9; TD Ameritrade Letter, at 7; Citi Letter, at 4; Decimus Letter, at 5–6.

[900] *See* IEX Letter II, at 8.

[901] *See* NYSE Letter II, at 12; NYSE Letter I, at 16. This commenter argued that market participants choose to send orders to off-exchange venues for reasons other than avoiding fees, such that simply lowering fees would not attract marketable order flow to exchanges. *See* NYSE Letter I, at 16. Another commenter noted that the Commission's assertion that any potential degradation of the effective bid-ask spread due to lower or reduced rebates could be mitigated by lower access fees was ''not supported by empirical data or substantive analysis.'' *See* Nasdaq Letter I, at 8–9. In response to these comments, the Commission notes that its belief is support by some theoretical studies that show that it is the net fees, *i.e.,* the rebates plus fees, that affect trading costs. *See e.g.* Colliard, J.E. & Foucault, T. (2012). ''Trading fees and efficiency in limit order markets.'' *Review of Financial Studies,* Vol. 25 (11), 3389–3421 (*available at: https://academic.oup.com/rfs/article/25/11/3389/1566107*). Some empirical studies produce similar results. *See, e.g.* Malinova, K. & Park, A. (2015). ''Subsidizing Liquidity: The Impact of Make/Take Fees on Market Quality.'' *Journal of Finance,* Vol

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that if high access fees drove market participants to route orders to off-exchange trading centers, then lower cost venues, such as NYSE American or EDGA would have larger market share.[902] Another commenter disagreed and argued that ''the cost of accessing lit markets in the form of access fees on securities exchanges has been one of the key drivers behind the continuing proliferation of non-exchange trading venues.'' [903] Given the disagreement among commenters, the Commission believes it is possible that lower transaction fees could potentially result in more marketable order flow being routed to exchanges. However, as discussed above, the Commission faces limitations in quantifying the effects that lower exchange transaction fees will have on marketable order flow and is unable to determine how likely this is to occur. One of the goals of the Pilot is to provide the Commission with data so that it can better evaluate these effects.

To the extent that conflicts of interest affect order routing,[904] lower rebates on taker-maker venues could potentially increase the off-exchange share of trading volume by causing broker-dealers to increase the internalization of smaller marketable orders, even if on-exchange liquidity or execution quality does not change.

Changes in the fill rates of orders at off-exchange trading venues could also affect how much marketable order flow is directed to off-exchange trading venues. However, there are reasons the Pilot could increase or decrease the fill rates of orders at off-exchange trading venues. Therefore, the effect these changes will have on the competition for marketable order flow is uncertain.

As discussed below,[905] there are reasons the Pilot could cause an increase or decrease in the non-marketable order flow routed to off-exchange trading venues. If there is an increase in the non-marketable order flow routed to off-exchange trading venues, then the fill rates of marketable orders routed to off-exchange trading venues would increase, which could cause more marketable order flow to be directed to off-exchange trading venues. Alternatively, a decrease in the non-marketable order flow routed to off-exchange trading venues would cause a decrease in the fill rate for marketable orders, which would cause less marketable order flow to be directed to off-exchange trading venues.

One factor that could reduce the chance of marketable orders being routed away from exchanges is that exchanges have a protected quote. One commenter believed that any off-exchange shifts are likely to be limited because these trading centers do not have a protected quote, and any shifts that would occur would still need to be consistent with best execution and not just redistribution to account for market participants' cost considerations.[906] However, given that 34% of all transaction volume occurs off-exchange at trading venues without a protected quote, it is unclear how much effect a protected quote will have on this competition.[907]

The Commission does not expect the Pilot will have a significant effect on the competition for retail marketable orders. Normally, these orders are internalized by off-exchange wholesale broker-dealers who pay retail broker-dealers for the order flow.[908] Since the Pilot does not restrict these rebates, the Commission does not expect the Pilot to affect the routing of marketable retail order flow.

ii. Nonmarketable Order Flow

The Pilot could increase or decrease the share of non-marketable order flow routed to off-exchange trading venues. This is reflected in the divergent views of commenters, who argue over the effects that reduced rebates could have on the share of non-marketable order flow routed to off-exchange trading venues. In considering these comments, and as discussed below, the Commission considered factors that could affect the decision to supply liquidity on exchanges or at off-exchange trading venues. Furthermore, in considering comments, the Commission also considered a number of ways the Pilot could potentially impact competition for non-marketable order flow, including: The impact of changes in rebates, the impact of changes in liquidity, and the impact of changes in off-exchange fill rates.

The decision to submit a non-marketable order on-exchange or route it to an off-exchange trading venue is a trade-off between the profits earned from providing liquidity on-exchange compared to the expected execution price and probability of having the order filled off-exchange. Higher exchange rebates, wider spreads, higher on-exchange fill rates (shorter on-exchange queue lengths), and lower off-exchange fill rates would all increase the chance of a trader deciding to provide liquidity on-exchange compared to routing an order to an off-exchange venue.[909] The impact of the Pilot on the competition between exchanges and off-exchange venues for non-marketable order flow will depend on how the Pilot affects these dimensions.

The Commission believes that the overall effect on the competition between exchanges and off-exchange venues for non-marketable order flow from a reduction in rebates for stocks in the test groups is unclear, because a reduction in rebates could result in either an increase or decrease in liquidity.[910] In theory, a reduction in exchange rebates without any changes in liquidity or fill rates would likely cause more non-marketable order flow to be routed to off-exchange trading venues. However, the Commission believes that this event is unlikely, because a reduction in exchange rebates and transaction fees could also affect liquidity. Since a reduction in exchange rebates and transaction fees could cause liquidity to increase or decrease,[911] it could also cause the share of non-marketable order flow routed to off-exchange trading venues to increase or decrease.

Several commenters voiced concerns that reduced rebates could cause liquidity to migrate from exchanges to

70(5), 509–36 (*available at: https://onlinelibrary.wiley.com/doi/10.1111/jofi.12230*). According to this literature, the effects of a reduction in rebates could potentially be offset by lower transaction fees. The Commission also notes that some commenters acknowledged this could be a potential effect of lower access fees. *See supra* note 23. However, other academic literature shows that in the presence of a fixed tick size, changes in fees and rebates can still affect trading volume, even in the absence of a change in the total fee. *See e.g.* Foucault, T., Kadan, O., & Kandel, E. (2013). ''Liquidity Cycles and Make/Take Fees in Electronic Markets.'' *Journal of Finance,* Vol. 68(1), 299–341 (*available at: https://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2012.01801.x*). According to this literature, a reduction in transaction fees may not fully offset the effects of an equal reduction in rebates. Given the mixed results from the academic literature and the disagreement among commenters, the Commission believes it is possible that lower transaction fees could potentially reduce some of the effects of an increase in effective bid-ask spreads caused by a reduction rebates, although the magnitude of this reduction is uncertain. The Commission believes that the Pilot would generate data and analysis that would help the Commission better understand the cumulative effects of changes in transactions fees and rebates on spreads and trading costs. *See supra* Section IV.C.1.a.i.

[902] *See* NYSE Letter II, at 12.

[903] *See* Decimus Letter, at 5–6.

[904] *See supra* Section IV.A.1 (Market Failure at the Broker-Dealer Level).

[905] *See infra* Section IV.D.2.a.ii (Nonmarketable Order Flow).

[906] *See* Healthy Markets Letter, at 10. Another commenter also emphasized that exchanges have the advantage of a protected quote and that they have an advantage in receiving orders that require immediate execution. *See* IEX Letter II, at 8.

[907] *See supra* Section IV.B.2.a.

[908] *See* Battalio Equity Market Study, *supra* note 530.

[909] *See supra* Section IV.B.2.b.

[910] *See supra* Section IV.C.2.b.iv.

[911] *See id.*

non-exchange trading centers, because exchanges will be restricted from providing rebates as incentives for liquidity provision, whereas non-exchange trading centers could freely offer rebates and other incentives to draw orders away from exchanges.[912] In contrast, several commenters disagreed and noted that ATSs generally do not pay rebates and tend to charge lower fees than the large exchanges,[913] and that such a pricing model would make it challenging for ATSs to start providing rebates sufficiently large enough to draw volume from exchanges. If rebates incentivize liquidity provision by providing extra revenue to liquidity providers, a reduction in rebates for stocks in the Test Groups could incentivize them to divert some of their non-marketable liquidity providing orders from maker-taker exchanges to off-exchange trading venues.[914] However, this decision could also be affected by how the rebate reductions impacted other dimensions of liquidity, so the overall effect is difficult to determine.

As discussed above, changes in liquidity could also affect the decision regarding where to route non-marketable limit orders. Since the effects of the Pilot on liquidity could be either positive or negative, The Commission is uncertain how these changes will affect the competition for non-marketable order flow between exchanges and off-exchange trading venues. If on-exchange liquidity worsens and bid-ask spreads widen or quoted depth decreases,[915] then institutional traders could direct more of their non-marketable orders to supply liquidity on maker-taker exchanges, either because realized spreads increased or because the queue position and fill rates of their on-exchange nonmarketable orders increased.[916] Alternatively, if liquidity improves and either bid-ask spreads tighten or quoted depth increases,[917] institutional traders could direct more their non-marketable orders to off-exchanges venues, because the profits earned from providing liquidity decreased.

Change in the rate that orders are filled off-exchange could also cause changes in the routing of non-marketable orders between exchanges and off-exchange trading venues. However, as discussed below, the effect of the Pilot on the fill rate of off-exchange non-marketable orders is unclear. Therefore it is difficult to determine the Pilot's effect on the routing of non-marketable orders. Changes in the rates at which non-marketable orders are filled off-exchange depend on how the routing of marketable order flow to off-exchange trading venues changes. If a reduction in fees causes more marketable orders to be routed to exchanges[918] it could reduce the fill rate of off-exchange orders, which could cause institutions or proprietary traders to substitute some of their off-exchange orders with non-marketable orders to supply liquidity on maker-taker exchanges. Alternatively, if the Pilot causes more marketable orders to be routed to off-exchange trading venues,[919] it could increase off-exchange fill rates, which could cause more orders that would have supplied liquidity on exchange to be routed to off-exchange venues. However, as discussed above, the Commission is unclear whether the share of marketable order flow routed to off-exchange trading venues will increase or decrease.

The Commission does not expect the Pilot will have a significant effect on the competition between exchanges and off-exchange trading venues for retail non-marketable orders. Often, these orders are routed by retail broker-dealers to maker-taker exchanges or to wholesale broker-dealers who pay retail broker-dealers for the order flow. The Commission believes that, despite the reduction in rebates, these orders will still be routed to exchanges or to wholesale broker-dealers who pay them for their order flow.[920]

b. Competition Between Exchanges

This section discusses the potential effects of the Pilot on competition between exchanges that use transaction-based fee and rebate pricing models. Although the Pilot could temporarily affect the competition for order flow between exchanges, the Commission believes that many of the effects of the Pilot on this competition, including the expected redistribution of market share among the existing exchanges, are unclear and difficult to determine in advance. This is reflected in the divergent views of commenters, who disagree about the effects that reduced rebates and transaction fees could have on competition between different types of exchanges.

Exchanges that pay fees and remit rebates frequently revise their fee schedules in order to remain competitive and to attract order flow. The impact of the rule on competition depends on the extent to which the fee cap and prohibition on rebates or Linked Pricing restrict exchanges' transaction-based fee strategies. As discussed in detail above,[921] the Commission believes that the Pilot, while changing either transaction fees or rebates on certain subsets of securities, could leave the margins that exchanges obtain from transaction-based pricing models unchanged. On the one hand, this could preserve the current state of competition among exchanges in the market for those securities. For instance, it may be possible for exchanges to modify fee structures in a way that leaves margins unchanged and does not impact competition between exchanges.[922]

On the other hand, the restrictions on fees and rebates could also alter the competitive dynamics between different exchanges. For example, the restrictions on fees and rebates could make

[912] *See, e.g.,* Cboe Letter I, at 7–8; Themis Trading Letter I, at 1; MFS Investment Letter, at 2; Wellington Management Letter, at 1; FIA Letter, at 3–4; ASA Letter, at 3; Era Letter, at 2; Knight-Swift Letter, at 2. One of the commenters suggested the Commission should evaluate how disparate treatment of liquidity provision between exchanges and non-exchange trading centers could affect market participants' incentives to compete for displayed liquidity. *See* Mastercard Letter, at 2. Another of the commenters also noted that the competitive balance between exchanges and off-exchange trading centers is uneven due to differences in regulatory oversight, including filings of fee changes; the ability to assess different fees to different customers; and the ability to offer sub-penny price improvements. *See* Cboe Letter I, at 8.

[913] *See* IEX Letter II, at 8. One commenter disagreed and noted that although ''few ATSs currently use maker-taker fee structures, but they have done so in the past and would be incentivized to do so in the future'' and that ''restricting fee structures on exchanges only would encourage those off-exchange venues to expand their use of order-routing incentives to gain a competitive advantage.'' *See* NYSE Letter I, at 4–5

[914] It could also result in market makers reducing their overall submission of non-marketable orders to supply liquidity, if it is the case that rebates encourage market makers to engage in excessive intermediation. This in turn could result in a reduction in trading volume. *See supra* note 823 and accompanying text.

[915] *See supra* Section IV.C.2.b.iv.

[916] It could incentivize institutional or proprietary traders to substitute their marketable orders with nonmarketable limit orders on maker-taker exchanges.

[917] *See supra* Section IV.C.2.b.iv.

[918] *See supra* Section IV.D.2.a.i.

[919] *See id.*

[920] As discussed in detail below, the Commission believes retail non-marketable orders for securities in Test Group 1 will still be routed to maker-taker exchanges. The restrictions on rebates in Test Group 2 may cause some of these orders to be routed to taker-maker venues, if they result in better execution quality. *See infra* Section IV.D.2.b.

[921] *See supra* Section IV.C.2.b.i.

[922] One commenter agreed with this view and suggested that even though the fee cap for the Proposed Test Group 1 was half of the current level, ''there was still significant enough differentiation available in the fee structure that trading may not appear materially different than the control group.'' *See* Credit Suisse Commentary, at 3. However, another commenter argued that the fee cap in Proposed Test Group 1 would reduce the exchange's ability to compete on fees by 50%. *See* Cboe Letter I, at 16.

exchanges more similar in Test Group stocks.[923] This could alter competition between exchanges by causing market participants to focus less on differences in fees and rebates and more on other metrics, such as execution quality when deciding to which exchanges to route order flow.

As discussed in detail above,[924] the Commission cannot *ex ante* predict whether the Pilot will increase or decrease trading volume on certain exchanges. Consequently, the Commission acknowledges significant uncertainty with respect to the effect of the Pilot on exchange competition.

One commenter suggested that ''inverted venues would likely increase market share as maker rebates disappear and the fee differential between venues declines for market makers, lowering the relative cost for queue priority.'' [925] The Commission acknowledges that it is possible that a reduction in rebates in Test Group stocks could make maker-taker exchanges less competitive for non-marketable orders and cause liquidity provision to migrate to inverted venues. However, if a reduction in rebates reduces excessive intermediation,[926] causes market makers to shift their liquidity provision off-exchange,[927] or worsens liquidity,[928] then institutional or proprietary traders' non-marketable orders could get better queue position and have higher fill rates on maker-taker venues, which could attract non-marketable order flow from taker-maker venues, where maker participants pay fees for better queue positions and fill rates.

If the Pilot causes changes in liquidity between exchanges in Test Group stocks,[929] it could affect the decision where to route marketable order flow. If an exchange experiences an improvement/decline in liquidity it may also experience an increase/decline in marketable order flow, especially since lower differences in fees/rebates between exchanges could reduce broker-dealer conflicts of interest and make them rely more on execution quality when deciding where to route marketable orders.[930] Additionally, it is also possible that lower transaction fees on maker-taker venues could make these venues more competitive and better able to attract marketable order flow in Test Group stocks from inverted venues.

The Pilot could also alter competition between exchanges by causing exchanges to choose to compete less intensively for order flow in one Test Group, and instead focus on stocks and ETPs in the other Test Group. Some of the shortfall in the competition for order flow for this subset of securities could be filled by off-exchange trading centers.[931] Alternatively, exchanges may revise pricing strategies for stocks in other groups, choosing to implicitly subsidize rebates for stocks in Test Group 1 using fees from Control Group stocks.[932] This may increase competition for order flow in one Test Group while reducing it in the other. In the presence of tighter restrictions on transaction-based fees during the Pilot Period, exchanges could also compete in other ways to attract trading volume (*e.g.,* discounts on connectivity fees or increased volume discounts), although the Commission believes that for Test Group 1 the ability to offer meaningful volume discounts would be limited in light of the $0.0010 fee cap in that group.[933]

The Pilot also could affect competition between large and small exchanges. The restrictions on rebates resulting from the Pilot could harm smaller exchanges that may be competing by paying large rebates rather than by producing better prices or execution quality.[934] As discussed in the Proposal,[935] liquidity tends to consolidate. Therefore, if smaller exchanges are unable to pay larger rebates in test stocks, they may lose order flow to larger, more liquid exchanges. To the extent that increased order flow in a security directed to a particular venue encourages broker-dealers to route more orders for that security to the venue, a liquidity externality may develop, making the venue the preferred routing destination for all orders.[936] Although these effects would likely last only for the duration of the Pilot, depending on the extent of the liquidity externalities, smaller exchanges could experience long-lasting competitive effects, such as a reduction in trading volume that continues after the expiration of the Pilot.[937] The Pilot also could temporarily discourage entry of new exchanges that might otherwise emerge to take advantage of the maker-taker and taker-maker pricing models.[938]

While the consolidation of liquidity may benefit market participants, it may also make it difficult for trading centers with low volumes in particular securities to compete with trading centers that represent liquidity centers in these securities.[939] In theory, this could lead to consolidation or exit by small exchanges as a result of the Pilot.[940] However, the Commission believes that either of those events is unlikely because the anticipated revenue shortfall, as discussed above,[941] would be for a limited duration and would not be significant enough to cause this result.

The Commission recognizes that the potential temporary competitive impacts stemming from the Pilot would generally depend on the exposure of each trading center to each Test Group and the Control Group of NMS stocks, because the constraints on fees and rebates apply differently to each group. For instance, if a high portion of an exchange's volume was derived from stocks in Test Group 2, it may be at a particular competitive disadvantage relative to an exchange that served markets across all groups, because the prohibition on rebates and Linked Pricing applicable to Test Group 2 would apply to a higher proportion of its trading volume. However, the Commission believes that, given its aim of producing representative groups of stocks and ETPs for the purposes of the Pilot, trading centers are not likely to be substantially more exposed to NMS stocks in any one group.

[923] *See supra* Section IV.C.2.b.i.

[924] *See id.*

[925] *See* Credit Suisse Commentary, at 4.

[926] *See supra* note 823 and accompanying text.

[927] *See supra* Section IV.D.2.a.

[928] *See supra* Section IV.C.2.b.iv.

[929] *See id.*

[930] *See supra* Section IV.C.1.b.

[931] *See supra* Section IV.D.2.a.

[932] *See, e.g.,* Healthy Markets Letter I, at 27 (noting that exchanges use fees collected to pay rebates).

[933] For NMS stocks included in Test Group 2 order flow incentives would be substantially reduced, particularly any new inducements that provide a discount or incentive on one side of the market that is linked to activity on the opposite side of the market.

[934] *See supra* Section IV.B.2.a.

[935] *See* the discussion of a liquidity externality in the Proposing Release, *supra* note 2, at 13042.

[936] *See id.*

[937] One commenter suggested that the effects of the Pilot may be permanent. *See* NYSE Letter I, at 4, 8.

[938] Academic studies suggest a number of new exchanges emerged specifically to take advantage of maker-taker and taker-maker pricing models. *See, e.g.,* Angel, Harris & Spatt, *supra* note 530. However, some commenters suggested that the loss of fee differentiation would lead to an increase in venues as exchanges try to make up for lost revenue through other means. *See, e.g.,* Fidelity Letter, at 8; Cboe Letter I, at 16–17.

[939] One commenter said that restricting transaction fees would disproportionally hurt small exchanges because ''large exchanges have diversified revenues away from transaction fees.'' *See* Magma Letter, at 2.

[940] One commenter believed that the loss in fee differentiation could lead to consolidation and fewer venues overall. *See* Credit Suisse Commentary, at 5.

[941] *See supra* Section IV.C.2.b.i (Loss of Exchanges' Fee Revenue).

c. Competition Between Broker-Dealers

The Pilot also could affect competition between broker-dealers. One commenter believed that, due to differences in broker-dealer business models, any reduction in rebate incentives or other forms of payment for order flow will increase transaction costs, and that large broker-dealers would be better able to adapt to increased trading costs and rebate reductions than small or middle-market broker-dealers.[942] The commenter believed that the Pilot would disproportionately advantage large broker-dealers who specialize in low touch execution or own ATSs because more customers and order flow would migrate to the largest brokers, and that the ''Commission should and is required to undertake a rigorous cost-benefit analysis to justify any policy that favors one group of Brokers over another.'' [943]

The Commission believes that the Pilot could differentially affect small and large broker-dealers, but differences in the potential compliance costs they face make it unclear whether the Pilot will disproportionately advantage large broker-dealers over small or middle-market broker-dealers. Although larger broker-dealers may possess economies of scale which may enable them adapt better to changes in fees and rebates, they are also more likely to be members of exchanges and subject to the compliance costs of adjusting their systems due to changes in exchange fee and rebate schedules discussed above.[944] As of December 2017, of the approximately 3,860 broker-dealers registered with the Commission, only 397 are listed as having memberships with at least one exchange and would encompass the set of executing broker-dealers that would be most affected by the Pilot. Therefore, it is likely that many small or middle-market broker-dealers will not have to bear the compliance costs discussed above.[945]

Additionally, since larger broker-dealers are more likely to be subject to these compliance costs, they may need to increase their commission rates more than smaller broker-dealers to compensate for these increased costs. This could potentially offset any advantage that larger broker-dealers may possess in being able to absorb any revenue loss caused by a reduction in payment for order flow, such as by being able to offer smaller increases in commissions compared to smaller broker-dealers. However, the Commission cannot quantify this difference, because it lacks sufficient data on the differences in commission rates between large and small broker-dealers.[946]

d. Competition Between Issuers

A number of commenters noted that the Commission, in the Proposing Release, did not discuss the competitive effects to issuers (common stocks) from inclusion in various Test Groups of the Pilot.[947] While the Pilot could potentially affect product market competition between issuers that compete in the same product market by affecting their ability to raise capital,[948] the Commission does not believe that this is likely to occur. Since the Commission does not believe that the Pilot will have a significant effect on the ability of issuers to raise capital,[949] the Commission does not believe the Pilot will have a significant effect on product market competition between issuers.

Some commenters argued that the Pilot could inadvertently pick ''winners and losers'' through the selection of securities to Test Groups.[950] One commenter believed that issuers in certain Test Groups could become ''less attractive investments than control group issuers'' [951] while another thought this could ''skew the competitive dynamic between issuers and impact the ability of the affected issuers to raise capital.'' [952] They argue that among securities with similar characteristics, securities that can offer higher rebates will attract more liquidity and trading volume at the expense of securities with lower rebates. Several commenters argued that issuers included in the test groups with reduced access fees or rebates would experience wider spreads, which would put them at a competitive disadvantage compared to peer firms in the control group by making it more expensive for them to engage in secondary offerings or conduct share repurchase programs.[953] One commenter argued that this would disproportionately affect ''small to medium issuers'' where ''[l]iquidity rebates can be critical . . . to motivate market makers to support the stock with aggressive and actionable quotations.'' [954] Although some securities may experience changes in liquidity as a result of the Pilot,[955] as discussed in detail below,[956] the Commission does not believe that issuers, including small and mid-capitalization issuers, will experience significant increases in the cost of capital as a result of the Pilot.

However, if the Pilot does differentially affect the cost of firms in the same product market to raise capital, it could affect product market competition by making it more difficult for the firms that experienced an increase in capital costs to compete. While the Commission acknowledges that theoretical and empirical studies suggest that an increase in costs of capital can affect product market competition,[957] the Commission does not believe the Pilot will have such an effect on product market competition between issuers. While the Commission acknowledges that some issuers may observe a widening of spreads and possible reductions in liquidity provision,[958] as discussed below,[959] the Commission does not believe that the Pilot will have a significant effect on capital formation for issuers.[960] Therefore, the Commission does not believe the Pilot will have a significant effect on product market competition between issuers. Furthermore, the Pilot will allow the Commission to obtain data to be able to analyze the impact of

[942] *See* ASA Letter, at 2.

[943] *Id.* at 2–3.

[944] *See supra* Section V.C.2.b.ii (Broker-Dealer Systems Costs).

[945] *See id.*

[946] *See supra* note 805.

[947] *See, e.g.,* Anixter Letter, at 1; STANY Letter, at 2; NYSE Letter, at 2; Johnson Letter, at 1; Cott Letter, at 1; P&G Letter, at 1; Nasdaq Letter I, at 8–9. One of these commenters ''urge[d] the Commission to further analyze and study the potential impact of the Transaction Fee Pilot on issuers and their securities (as well as investors in those securities), including the impact on competition between issuers in the pilot test groups and those in the control group.'' *See* Anixter Letter, at 1. Another commenter argued that the Commission was ''treating all issuers the same without consideration for the very significant differences in how the securities of different sized and priced companies trade.'' *See* Nasdaq Letter I, at 8.

[948] *See infra* Section IV.D.3 (Capital Formation).

[949] *See id.*

[950] *See* Nasdaq Letter I, at 10; Invesco Letter, at 2 (discussing the competitive effects for ETPs).

[951] *See* NorthWestern Letter, at 2.

[952] *See* Ethan Allen Letter, at 1. *See also* McDermott Letter, at 1; ProAssurance Letter, at 1; Era Letter, at 2; Avangrid Letter, at 1–2.

[953] *See* NYSE Letter I, at 6–7; Apache Letter, at 2; Mastercard Letter, at 2; Era Letter, at 2.

[954] *See* Nasdaq Letter I, at 8–9.

[955] *See supra* Section IV.C.2.b.iv.

[956] *See infra* Section IV.D.3 (Capital Formation).

[957] *See, e.g.,* Maksimovic, V. (1995). ''Financial Structure and Product Market Competition.'' Ch. 27 in *Handbooks in Operations Research and Management Science,* Vol. 9, 887–920 (*available at: https://www.sciencedirect.com/science/article/abs/pii/S0927050705800714*) and Campello, M. (2006). ''Debt Financing: Does It Boost or Hurt Firm Performance in Product Markets?'' *Journal of Financial Economics,* 82(1), 135–172 (*available at: https://www.sciencedirect.com/science/article/pii/S0304405X05001777*) (hereafter ''Campello (2006)'').

[958] *See supra* Section IV.C.2.b.iv.

[959] *See infra* Section IV.D.3 (Capital Formation).

[960] One commenter agreed and argued that ''there simply is no evidence that the Pilot will cause any imminent danger to any issuer's stock price or liquidity.'' *See* Better Markets Letter, at 3.

changes to fees and rebates and how those changes affect a myriad of issues, including their impact on competition between issuers.

e. Competition Between ETPs

The Pilot may also impact the competitive dynamics between ETPs.[961] Although some ETPs could potentially be harmed by the Pilot's effect on this competition, there is uncertainty regarding the Pilot's effect on the liquidity of ETPs and therefore on competition between ETPs.[962]

Unlike common stocks, whereby trading and investing in those securities is likely driven by firm-specific characteristics, ETPs with similar investment strategies may be more substitutable. For example, some ETPs may follow the same underlying index, and only differ in expense ratios, trading characteristics, and in some cases, tracking error. Although some of these characteristics may be meaningful distinctions for long-term investors, such as expense ratios, other characteristics, such as trading characteristics, including transaction costs, are likely to be meaningful to market participants that trade rather than invest in some ETPs.[963] One concern is that changes in liquidity between similar ETPs in different Pilot groups could have an impact on competition by harming ETPs that experience a decline in liquidity.[964] A decline in ETP liquidity could affect competition by causing trading volume (demand) to migrate from an ETP that experienced a decline in liquidity to a nearly identical ETP in another Pilot group that might have experienced an improvement in liquidity.[965] For example, ETPs that are subject to higher rebates may benefit and attract more liquidity and trading volume at the expense of similar ETPs in different Test Groups that are restricted to offering lower rebates.[966] A decrease/increase in secondary market demand for an ETP could cause a decrease/increase in the total assets under management of the ETP's sponsor by causing authorized participants to redeem/create creation units of ETP shares in order to take advantage of arbitrage opportunities in the secondary market.[967] However, one commenter (itself an ETP sponsor) noted that the competitive effects for ETPs would likely be temporary and minimal, and would have little effect on investor behavior; therefore, the benefits of including ETPs in the Pilot outweigh the potential costs of competitive impacts for ETPs.[968]

One commenter stated that these competitive effects are likely to be more challenging for small or less liquid ETPs that rely on ''market maker support and require those same firms to provide seed capital (*e.g.,* capital investments).'' [969] These commenters raised concerns that reductions or prohibitions on rebates in certain Test Groups could exacerbate the anticompetitive effects for the small, less liquid ETPs in these programs by causing degradation in liquidity provision for these ETPs.[970]

The Commission acknowledges that the Pilot could potentially alter the competitive dynamics between and demand for similar ETPs that are placed in different Test and Control groups. The Pilot could inadvertently create ''winners and losers'' among ETPs through both competitive shifts and the potential exit of liquidity providers, and for some ETPs if these costs are severe, could lead to exit by certain ETPs from the market. However, as discussed in detail above,[971] since the Commission does not know *ex ante* how the Pilot will impact the liquidity of ETPs, it is unable to quantify the effects that the Pilot will have on competition between ETPs. One of the goals of the Pilot is to provide the Commission with data so that it can better evaluate these effects.

In addition to affecting ETP competition through changes in ETP liquidity, the Pilot could also affect ETP competition through its effects on ETPs underlying securities. As discussed in detail above,[972] if the Pilot impacts the liquidity of the underlying securities, it could impact the create-redeem process for ETPs. This could affect the price efficiency of the ETP by impacting the cost to authorized participants of eliminating mispricing by participating in the create-redeem process. For example, if the majority of an ETP's underlying securities are placed in the same Test Group and experience a decline in liquidity, it could cause the deviation between the ETPs price and its NAV to increase, *i.e.,* the price of the ETP could deviate more from the price of its underlying securities. This could cause demand for the ETP to decline and trading volume to migrate to a similar ETP with a lower deviation between its price and NAV, whose underlying securities might not have experienced a decrease in liquidity.[973] However, because of the random nature of the assignment of securities to Pilot groups and the fact that similar ETPs may experience similar liquidity changes in their underlying securities, the Commission does not believe that this will have a significant impact on competition between ETPs.

3. Capital Formation

The Commission does not expect the Pilot to have a substantial permanent impact on capital formation because the Pilot is limited in duration and because it is not expected to have a large impact on issuer cost of capital. However, many of the implementation costs associated with the Pilot would require exchanges to expend resources that they may have otherwise invested elsewhere or distributed to shareholders in order to

[961] A number of commenters stated concerns that the Commission had not fully considered the competitive effects on ETPs resulting from the Pilot. *See, e.g.,* NYSE Letter I, at 7; ICI Letter I, at 4; State Street Letter, at 3; STA Letter, at 4; Schwab Letter, at 3; STANY Letter, at 4; Clearpool Letter, at 7–8; Cboe Letter I, at 17–18; Nuveen Letter, at 1,3; BlackRock Letter, at 1–2; Fidelity Letter, at 9; SIFMA Letter, at 4–5; Credit Suisse Commentary, at 6; Healthy Markets Letter II, at 8; Oppenheimer Letter, at 3; ICI Letter II, at 5; Nasdaq Letter I, at 8.

[962] *See supra* Section IV.C.2.b.iv.2.

[963] For example, three ETFs that track the S&P 500 Index have expense ratios of 9 bps (SPY), 5 bps (IVV), and 4 bps (VOO). On a $10,000 holding over a year, this results in fees of $9, $5, and $4, respectively, whereas on a 100-share trade, a widening of spreads by one tick would result in a cost of $1.

[964] *See supra* Section IV.C.2.b.iv.

[965] A decline in an ETP's liquidity could also cause demand to migrate to another type of investment vehicle, such as a mutual fund, that follows the same investment strategy.

[966] One commenter noted that ETPs in test groups with significant rebate reductions or restrictions could be disadvantaged competitively to similar ETPs not subject to changes to rebates, and because of the nature of ETPs, may lose market share to their competitors. *See* Nasdaq Letter I, at 8. Many commenters agreed with this argument. *See* ICI Letter I, at 4; MFS Letter, at 1; Nuveen Letter, at 2; FIA Letter, at 4; SIFMA Letter, at 4–5; Issuer Network Letter I, at 3; Schwab Letter, at 3; Fidelity Letter, at 9; Invesco Letter, at 2; State Street Letter, at 3; Oppenheimer Letter, at 3; Clearpool Letter, at 7–8; Angel Letter I, at 2; STANY Letter, at 4; Healthy Markets Letter I, at 11; Cboe Letter I, at 17; NYSE Letter I, at 7; Morgan Stanley Letter, at 3–4; BlackRock Letter, at 1–2. One commenter believed that the Pilot could ''unintentionally advantage ETFs in the lower fee group.'' Credit Suisse Commentary, at 6.

[967] *See supra* Section IV.B.2.d (Market for Assets Under Management).

[968] *See* Vanguard Letter, at 2. Many commenters believed that ETPs should only be included in the Pilot if an alternative design was implemented for ETPs, such a placing similar ETPs in the same group or rotating ETPs between groups. *See supra* Section II.B.3.b and *infra* Section IV.E.5.h for a summary of these comments and discussions of the costs and benefits of alternative Pilot designs for ETPs.

[969] *See* Nasdaq Letter I, at 8.

[970] *See id.* One commenter noted that 477 ETPs trade less than 2,000 shares per day, while 234 trade between 2,000 and 5,000 shares per day. In aggregate, these ETPs have approximately $32 billion in AUM, and the Pilot could adversely impact liquidity provision to these names leading to unintended investor harm. *See* Virtu Letter, at 7.

[971] *See supra* Section IV.C.2.b.iv.

[972] *See id.*

[973] ETPs might not hold all of the securities in the index that they track. ETPs that track similar indexes may hold different underlying securities in their representative portfolios.

maintain the List of Pilot Securities and any changes to those lists, as well as the maintenance of the Exchange Transaction Fee Summary and the order routing data.[974]

As discussed above,[975] the Commission is unable to determine *ex ante* the overall temporary impact of the Pilot on liquidity and total transaction costs, because the Pilot's effects on liquidity could be positive or negative and vary across securities. As a result, it is unclear to what degree the Pilot will temporarily promote or harm capital formation. On one hand, the Pilot could temporarily reduce total transaction costs for many market participants by consolidating liquidity and improving execution quality.[976] To the extent that such cost reductions are realized, they may, for instance, permit market participants to more efficiently deploy financial resources by reducing the cost of hedging financial risks.[977] As a result, the Pilot may marginally and temporarily promote capital formation. Improvements in both liquidity and price efficiency could make capital markets more attractive, at least for the duration of the Pilot.

On the other hand, the temporary reduction in rebates to certain Test Groups as a result of the implementation of the Pilot could widen quoted spreads, thereby potentially leading to worse execution prices and subsequently reducing liquidity for the duration of the Pilot.[978] This would have similar indirect impacts on capital formation but in the opposite direction, by increasing the cost of hedging financial risks.

Potentially, if the Pilot leads to a significant deterioration in liquidity for some listed issuers,[979] longer term, it could affect capital formation for these securities by increasing the costs for them to raise capital.[980] Further, the Pilot could lead to a delay by some issuers to raise additional capital during the Pilot's duration.[981] A number of commenters agreed with these assessments and expressed concern that random assignment to certain Test Groups could adversely affect issuers' ability to raise capital or manage their capital structure, by increasing the cost of secondary offerings or the costs associated with share repurchase programs.[982]

Several commenters argued that these effects would be worse for small and medium sized companies.[983] In theory, if the temporary impacts on liquidity acutely impact some firms, it could lead to the potential exit of these issuers from the capital markets, either through acquisition or delisting. These risks could be greater for smaller issuers, because they may not possess enough capital to ride out negative liquidity shocks. However, the Commission does not believe that this is likely to occur because smaller issuers tend to have high transaction costs relative to fee and rebates.[984]

Alternatively, a number of commenters disagreed and did not think the Pilot would have a significant impact on issuers' ability to raise capital.[985] The Commission agrees with these commenters. As discussed in detail below, due to the limited magnitude of the effects of the Pilot study, and the uncertain impacts on liquidity, the Commission does not expect the Pilot will have significant effects on the ability of firms to raise capital.

The Pilot may also affect capital formation through its impact on discretionary accounts. A number of broker-dealers have discretionary agreements with their clients, wherein the broker can transact in the client's account without the client's consent. For the duration of the Pilot, some broker-dealers may alter the composition of their clients' portfolios to trade and hold greater proportions of the accounts in high-rebate NMS stocks (including ETPs) in the Control Group. Such revisions to portfolio composition as a result of the Pilot are not necessarily efficient from an investor's perspective and could have a detrimental impact on capital formation insofar as they increase the riskiness of client portfolios or decrease client portfolios' expected returns.[986] This behavior would temporarily distort the market for high-rebate stocks and ETPs, creating a higher demand for these securities and potentially leading to an inefficient allocation of capital based on signals that are unrelated to firm fundamentals.

One commenter analyzed secondary offerings from its listed issuers during 2017 and found that lower liquidity was associated with a higher cost of capital.[987] The Commission points out that the analysis performed by this study merely examines associations between spreads and capital costs and does not establish that wider quoted spreads cause higher costs of capital.[988] To supplement this comment, Commission staff analyzed the same secondary offerings and found that after controlling for fundamental issuer characteristics, such as size, book-to-market, and analyst coverage, the size of the quoted spread was not positively related to issuers' costs of capital.[989]

[974] The costs associated with implementation and compliance with the Pilot are discussed in more detail above. *See supra* Section IV.C.2.a.

[975] *See supra* Section IV.C.2.b.iv.

[976] *See id.*

[977] One commenter argues that ''the current system increases transaction costs to the public and . . . increases the issuer capital costs.'' *See* Larry Harris Letter, at 9.

[978] *See* Chacko, G.C., Jurek, J.W., & Stafford, E. (2008). ''The Price of Immediacy.'' *Journal of Finance,* Vol. 63(3), 1253–1290 (*available at: https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1540-6261.2008.01357.x*). According to Chacko et al., liquidity has three important dimensions: Price, quantity, and immediacy. A market for a security is considered ''liquid'' if an investor can quickly execute a significant quantity at a price at or near fundamental value. *See also supra* Section IV.C.2.b.iv.

[979] *See supra* Section IV.C.2.b.iv.

[980] *See supra* Section IV.C.2.b.v.

[981] Another commenter asserted that the Pilot could harm thinly traded stocks and the IPO market. *See* Nasdaq Letter III, at 9. With respect to thinly traded securities, the Commission notes that the Pilot will exclude NMS stocks that trade less than 30,000 shares per day. The Commission notes that the Pilot will exclude new publicly traded companies whose IPO occurs after the Pilot Securities are selected, and therefore the Pilot should not harm the market for new IPOs. *See* Section II.C.6. *supra* (discussing the exclusion of certain thinly traded securities); *see also* Section IV.C.2.b.v. *supra* (discussing the potential impact of the Pilot on issuers).

[982] *See e.g.,* Nasdaq Letter I, at 2; ASA Letter, at 3; ACCO Letter, at 1; NorthWestern Letter, at 2.; Unitil Letter, at 1–2; McDermott Letter, at 1; Weingarten Letter, at 1; ProAssurance Letter, at 1; SMP Letter, at 1; Halliburton Letter, at 1; Era Letter, at 2; Newpark Letter, at 1; Knight-Swift Letter, at 1; Avangrid Letter, at 1–2; NYSE Letter I, at 3, 6–7, 13–14; *e.g.,* Level Brands Letter, at 1; Johnson Letter, at 1; P&G Letter, at 1; Sensient Letter, at 1; Apache Letter, at 2; Ethan Allen Letter, at 1–2. *See also* the discussion in *supra* Section IV.C.2.b.v (Impact on Issuers).

[983] *See* Nasdaq Letter I, at 2; ASA Letter, at 4.

[984] While the Commission acknowledged this possibility in the Proposing Release, it did not suggest that such effects were likely. Rather, the Commission stated that it did not ''expect the proposed Pilot to have a substantial permanent impact on capital formation . . . .'' *See* Proposing Release, *supra* note 2, at 13068–69.

[985] *See* IEX Letter II, at 3–4; Healthy Markets Letter II, at 2; ICI Letter II at 4–5; T. Rowe Price Letter, at 4–5.

[986] Allocative efficiency in the context of investment choice is optimized when there are no restrictions on the set of investment opportunities available to an investor. *See, e.g.,* Nielsen, N.C. (1976). ''The Investment Decision of the Firm under Uncertainty and the Allocative Efficiency of Capital Markets.'' *Journal of Finance,* Vol. 31(2), 587–602 (*available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-6261.1976.tb01908.x*) If the Pilot potentially leads some broker-dealers to alter the investment opportunity set to avoid securities that do not pay rebates, then allocative efficiency for those investors would likely be impaired since the opportunity set is restricted.

[987] *See* NYSE Letter I, at 3.

[988] One commenter agreed that there is no evidence that ''issuer costs of capital are caused by quoted spreads.'' *See* IEX Letter II, at 4.

[989] Depending on how exchanges measure discounts (a proxy measure for the cost of capital), whether from the bid price or the midpoint, there could be mechanical variation imposed simply by differences on how data vendors measure

Continued

The Commission notes that a temporary effect on transaction costs may not have the same impact on cost of capital as a permanent effect on liquidity and does not believe that any temporary increase in transaction costs resulting from the Pilot could be significant enough to affect issuers' costs of capital. Indeed, the experience with the recent Tick Size Pilot provides an example of a temporary change in liquidity that did not affect cost of capital. While several studies found that the Tick Size Pilot increased transaction costs,[990] the findings of a DERA white paper suggest that the market did not expect the Pilot to affect stock prices of companies in the Test Groups.[991] Specifically, the paper finds that the announcement of the assignment of stocks to the Test Groups and the Control Group did not generate significant abnormal returns for stocks in the Test Groups, either in absolute terms or relative to stocks in the Control Group.[992] Under the standard assumption that the market's expectations about the effects of the Pilot were correct, this result indicates that the increase in quoted spreads and transaction costs during with the Pilot had no impact on stock prices. Thus, these findings cast doubt on the idea that temporary changes in transaction costs affected the cost of capital of small capitalization companies. In addition, because the Tick Size Pilot enacted a 500% increase in the tick size, that pilot could arguably have a bigger direct impact on transaction costs than the Transaction Fee Pilot, which would reduce rebates by 30% of a tick.

One commenter disagreed and believed that the findings of the DERA white paper were flawed.[993] This commenter argued that the DERA study ''relies on a selective, narrow, and irrelevant data set'' and that ''focusing on a few days around the time when stocks were assigned to test groups within the Tick Pilot, and not a materially longer period of time during which the Tick Pilot's quoting and trading restrictions were in effect, is a clear indication that DERA narrowly tailored its study to reach a specific and flawed conclusion.'' [994] This commenter stated that it ''does not believe that the White Paper supports any conclusion regarding the impact of the Tick Pilot on investors or the potential impact of the Transaction Fee Pilot on issuers.'' [995]

However, another commenter noted that ''DERA's event study is informative to a central criticism'' raised by some commenters that ''upon implementation of the [Pilot], spreads will widen in stocks chosen for the 'low rebate' or 'no rebate' buckets and that wider spreads will harm issuers of the impacted stocks.'' [996] This commenter found the ''lack of price impact . . . telling,'' because ''the price of . . . stock is the primary measure'' of ''potential harm to issuers . . . .'' [997] This commenter explained that, ''if liquidity diminishes, or expected returns of the stock decline, this would be reflected in the value of the stock—and no such statistically significant decline in value was found.'' [998] The commenter believed that the short duration of DERA event study was appropriate because ''markets rapidly incorporate new information'' into stock prices.[999] The Commission agrees with this commenter and believes that the DERA white paper used an appropriate methodology to study how the increase in quoted spreads and transaction costs from the Tick Size Pilot affected the stock prices and cost of capital of firms in the Test groups. The Commission believes that the DERA white paper did not rely on a ''selective, narrow, and irrelevant data set'' and instead picked the appropriate time period, the few days surrounding publication of the list of which stocks would be included in the test and control groups, to examine how the market reacted to the information about which stocks would have their spreads widen as a result of the Tick Size Pilot. This approach is standard in the academic literature because information is quickly incorporated into stock prices at the time it is made public. The Commission believes that the DERA white paper is relevant to this Pilot because it examines how a firm's cost of capital is affected by a temporary widening of the firm's spreads, which is a potential effect of this Pilot.[1000] As discussed above and noted by the commenter,[1001] if a firm's cost of capital increased as a result of the wider spreads caused by the Tick Size Pilot, we would expect that stock's price to decline during the announcement of test and control groups.

The Commission recognizes that another paper comes to the opposite conclusion regarding the impact of the Tick Size Pilot on costs of capital, but does not find the paper convincing. This paper compares the stock price reactions of stocks in the test and control groups around the time the Tick Size Pilot was implemented.[1002] They find that stocks in the test groups that experienced a decrease in liquidity when the tick size widened also experienced a decrease in prices, relative to stocks in the control group, around the time the Tick Size Pilot was implemented.[1003] However, it is unclear exactly what the return differences documented in the study are measuring. If investors expected that test group stocks would experience a temporary reduction in liquidity during the Tick Size Pilot and that this would make it more costly for those stocks to raise capital, then standard economic assumptions would expect to see a negative stock price reaction for test group stocks around the announcement of the Tick Size Pilot test and control group stocks, not during the time period following the Tick Size Pilot implementation.

Given the results of the DERA study and the uncertainty surrounding the Albuquerque et al (2018) results, combined with the fact that the average trading cost increase, i.e. decrease in liquidity, during the Tick Size Pilot is greater than the expected potential effects on liquidity during the Transaction Fee Pilot, the Commission

discounts. Staff analyses relied on SDC measures of discounts to approximate issuers' costs of capital, and observed that using the same spread breakpoints, discounts were approximately 3.6% for issuers with spreads below 20 bps, and 7.6% for issuers with spreads above 20 bps, indicating differences in methodologies of how discounts are computed can affect magnitudes. Regardless of the difference in magnitudes of the discounts, low-spread issuers, on average, had lower discounts than high spread issuers, consistent with NYSE's spread-discount relationship. *See* NYSE Letter I, at 3.

[990] *See* e.g., Hu, E., Hughes, P., Ritter, J., Vegella, P., & Zhang, H. (2018). ''The Tick Size Pilot Plan and Market Quality.'' SEC White Paper (*available at: https://www.sec.gov/dera/staff-papers/white-papers/dera_wp_tick_size-market_quality*).

[991] *See* Pachare, S. & Rainer, I. (2018). ''Does the Tick Size Affect Stock Prices? Evidence from the Tick Size Pilot Announcement of the Test Groups and the Control Group,'' SEC White Paper (*available at: https://www.sec.gov/dera/staff-papers/white-papers/dera_wp_does_the_tick_size_affect_stock_prices*). *See also* fn. 13 in Albuquerque, R.A., Song, S., & Yao, C. (2018). ''The Price Effects of Liquidity Shocks: A Study of SEC's Tick Size Experiment.'' Working Paper (*available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3081125*), reporting on their finding that the stock prices did not react to the announcement of which stocks were in the pilot.

[992] The results were similar when they limit the analysis to stocks with pre-Pilot quoted spreads smaller than $0.05.

[993] *See* NYSE Letter V, at 1.

[994] *See id.* at 2.

[995] *See id.* at 3.

[996] *See* Verret Letter II, at 1.

[997] *See id.* at 2.

[998] See id.

[999] *See id.* at 3.

[1000] *See supra* Section IV.C.2.b.iv.

[1001] *See* Verret Letter II, at 2.

[1002] *See* Albuquerque et al. (2018), *supra* note 991.

[1003] The list of stocks assigned to the Tick Size Pilot test and control groups was announced on September 3, 2016. The rollout of the Tick Size Pilot was implemented on a staggered basis over October 2016. *See* Hu et al. (2018), *supra* note 990.

believes that the costs of capital are unlikely to significantly increase for Test Group stocks due to a temporary decrease in liquidity during the Transaction Fee Pilot. Because the Tick Size Pilot was conducted on firms with small market capitalizations, this should also help alleviate concerns for small to mid-capitalization issuers about temporary decreases in liquidity increasing the costs related to raising capital. One commenter agreed that, although some issuers may have temporary widening of spreads over the Pilot duration, any changes to liquidity caused by the Pilot are unlikely to affect the costs to firms when raising capital.[1004] Therefore, the Commission does not believe that issuers, including small and mid-capitalization issuers, will experience significant increases in the cost of capital as a result of the Pilot.

E. Alternatives

The Commission considered several alternatives to the Pilot, including: (1) Proceed to propose rule amendments without first conducting a Pilot; (2) expand the Pilot to include off-exchange venues, including ATSs; (3) include a trade-at provision; (4) conduct alternative pilots; and (5) adjust the design of the Pilot (*e.g.,* including a number of alternatives proposed by commenters).

1. Propose Rulemaking Without Conducting a Pilot

Several commenters suggested that the Commission should proceed with rulemaking rather than first conducting the Pilot. For example, as discussed elsewhere in this release,[1005] as an alternative to conducting the Pilot, one commenter suggested that the Commission impose a ''gradual reduction of the current fee cap across all stocks periodically.'' [1006] Such an approach would address the concerns raised by a number of commenters, discussed above, about the potential impact on largely identical ETPs and listed issuers that are placed in different test groups, without the added cost and complexity of rotating stratified samples through the Pilot.[1007] In addition, such an approach could provide data on successive reductions in the current fee cap, which could be useful to the Commission if it considers future policy making to reduce the Rule 610(c) fee cap.

However, depending on the number of fee caps to be tested, this alternative would increase instability in the markets in terms of the fee regime that markets are subject to. This would occur because the cap would be reduced successively and linearly and each tranche would need to be in place for a sufficient amount of time in order to obtain statistical power. Further, without a control group, researchers would be unable able to conduct a differences-in-differences analysis as the data would be subject to the impact of events across time, which would frustrate the ability of researchers to compare groups to one another over time. The Commenter was open to having a control group not subject to the decline in fees, which would allow for identifying causality. However, even with the inclusion of a control group, this alternative would still increase the time in which markets are subject to instability in fees and rebates and the time needed to understand the impact of fees and rebates because at each different fee level the Commission would need to test that fee level for a sufficient time to gain statistical power. Further, including a control group in this alternative could potentially result in different treatment for largely identical ETPs, as in the adopted Pilot, but with an increase in the potential time needed for study.

Alternatively, this commenter suggested that the Commission implement ''dynamic, stock specific ticks with transaction fees capped at, for example, 10% of the tick size (e.g. $0.0010 per share if a penny tick; $0.0050 per share if a nickel tick.)'' [1008] Another commenter suggested that, rather than pursuing the Pilot, the Commission should amend Rule 610(c) to reduce the access fee cap to $0.0010 and also conduct ''an abbreviated study of the effects of eliminating rebates'' similar to the ''no-rebate'' Test Group.[1009] One commenter recommended that the Commission ''ban maker-taker and inverted transaction fee pricing as well as all volume-based discounts that are not clearly and directly related to cost savings'' [1010] while another suggested that the Commission enhance the duty of best execution in lieu of a pilot.[1011]

Several commenters opined on the potential benefits and reduced costs of these alternatives as compared to proceeding with the Pilot. For example, according to one commenter, a gradual ''walk down'' approach would be preferable to the Pilot because it would allow the Commission to ''observe order routing behavior changes, while applying the same economics to all stocks uniformly'' and would ''eliminate concerns about issuers being subject to disparate treatment.'' [1012] According to this commenter, it also would ''eliminate[ ] concerns that the Pilot results will not reflect the actual outcome if such changes are applied more broadly to stocks outside of the Pilot.'' [1013] Similarly, another commenter noted that it would be ''more effective and less damaging to the equities market to strengthen and better articulate the broker-dealers' Duty of Best Execution'' than proceeding with the Pilot, which the commenter believed would impost ''tremendous costs'' to investors and potentially ''upend[ ] the existing economics and framework around equity executions.'' [1014] Further, one commenter noted that because ''there is broad recognition'' that the access fee cap should be reduced, there is no need to incur the costs associated with the Pilot and the Commission should simply reduce the fee cap to $0.0010 to ensure that displayed prices reflect the actual economic costs of an execution, while also allowing exchanges to continue to offer rebates to incentivize liquidity provision if they chose to do so, while also maintaining their net capture rates.[1015] This commenter believed that lowering the fee cap to $0.0010 would provide ''immediate benefits to the equities markets with respect to price transparency and addressing conflicts of interest'' [1016] and would be ''better calibrated with today's market pricing.'' [1017] Another commenter argued that ''the effects of maker-taker and inverted transaction fee pricing on the markets are well understood'' and therefore concluded that it was very unlikely that ''we will learn anything of value about the economics of exchange transaction fee pricing'' from the Pilot.[1018] Consequently, this commenter believed that the Commission should mandate that the exchanges return to a traditional transaction fee pricing

[1004] *See* IEX Letter II, at 3–4.

[1005] *See supra* Section II.C.8(g) and (h) and Section IV.E.4.

[1006] Morgan Stanley Letter, at 2.

[1007] *See supra* note 104 and accompanying text.

[1008] *Id.* at 2–3.

[1009] Goldman Sachs Letter, at 1–4.

[1010] Larry Harris Letter, at 9.

[1011] *See* Nasdaq Letter, at 1, 3.

[1012] Morgan Stanley Letter, at 2.

[1013] *Id.* at 2.

[1014] Cboe Letter I, at 12, 21–22. *See also* Nasdaq Letter I, at 2 (referring to the Pilot as a ''risky experiment'').

[1015] Goldman Sachs Letter, at 1, 3.

[1016] *Id.* at 1–3.

[1017] *Id.* at 4.

[1018] Larry Harris Letter, at 9–11. *See also* Goldman Sachs Letter, at 4 (stating there is ''broad support in favor of lowering the Fee Cap today,'' and the Pilot ''will not yield a different conclusion.'').

model, which the commenter believed would not result in much cost to market participants.[1019]

However, other commenters strongly supported the Pilot as a first step because it ''should provide data to enable the Commission to determine the impact of transaction-based fees and rebates on order routing behavior, on execution quality and on market quality'' and believed the data collected would ''support appropriate reforms to U.S. equity market structure.'' [1020] Among those who supported conducting the Pilot before considering rulemaking, one commenter noted the lack of information regarding the rebates paid by each exchange to each broker and stated that such lack of disclosures ''reinforce the difficulty in assessing the impact of the structure of a[cc]ess fees on distorting best execution, conflict[s] of interest and competitiveness of exchange pricing.'' [1021] Still another commenter opined that the Pilot ''is a necessity'' to provide a ''quantitative approach to which stocks require liquidity support and how much a rebate should be to incent support.'' [1022]

The diversity of opinion and lack of consensus among the commenters regarding the impact of fees and rebates on market quality and order routing behavior support the view that further study in this area is warranted before permanently adopting any changes through rulemaking. As discussed above, there was sharp disagreement between commenters about the potential impacts of reductions in fees and rebates, yet there is little data available to evaluate these claims on a broad scale. As discussed above, the Commission believes that there is no need to delay proceeding with the Pilot in order to pursue other potential equity market structure initiatives. Equity market structure issues have been considered for a number of years and, as a result of several initiatives in this area, the Commission has developed the Pilot, which is focused on and is intended to gather empirical evidence on the impact of exchange transaction fees and rebates. Similarly, the Commission does not believe that it needs to complete the Pilot before proceeding to consider all other equity market structure initiatives. The Commission expects that it will continue to evaluate the need for other changes to equity market structure during the pending of the Pilot.

[1019] *Id.*

[1020] RBC Letter I, at 2.

[1021] Spatt Letter, at 4.

[1022] Babelfish Letter, at 3.

2. Expand Transaction Fee Pilot To Include Non-Exchange Trading Centers

The Transaction Fee Pilot would not require ATSs or other non-exchange trading venues to comply with the limits to transaction fees or rebates imposed by the Pilot. Some commenters believed that non-exchange trading centers should be included in the Pilot and that the representativeness of the data obtained from the Pilot would be impaired by the exclusion of ATSs and other off-exchange trading centers.[1023] For example, one commenter stated that the Pilot ''would not gather any insight into the trading patterns at those centers'' because the Commission would be unable to ''follow order flow across all trading venues in the market, leaving it with an incomplete picture of the issue it seeks to study.'' [1024] Another commenter believed that excluding non-exchange trading centers could skew the results of the Pilot, as broker-dealers could shift order flow away from exchanges in response to the Pilot, thereby limiting the Commission's understanding of the overall impact of changes to transaction-based fees and rebates.[1025]

An alternative design that includes non-exchange trading centers like ATSs would be broader than the Pilot—not only because such a design would include more trading venues, but also because such a design would have to account for the fact that non-exchange trading centers like ATSs use other inducements, besides transaction-based fees and rebates, to incent order flow.[1026] The inclusion of non-exchange trading centers could, therefore, supply information about a more complete set of order routing decisions, increase the representativeness of the results obtained, and provide a deeper understanding regarding the ways in which exogenous shocks to transaction-based fees and rebates (and other inducements) affect order routing decisions. For example, a pilot that included non-exchange trading centers, and regulated the inducements used by such centers, might impact payment for the internalization of retail order flow, which would allow researchers to evaluate how these inducements affect retail order routing. A pilot that addressed payment for order flow on non-exchange trading centers could, in turn, result in more retail order flow being routed to lit exchanges, which also could increase displayed liquidity and potentially improve price efficiency.

However, the inclusion of non-exchange trading venues may be difficult to implement. First, non-exchange trading venues charge idiosyncratic and individually-negotiated fees to market participants, and often bundle fees for ATS usage with other broker-dealer fees, such that it would be exceptionally difficult to create and then impose a uniform fee regime on such venues.[1027] For example, it is unclear how an ATS that charges an ''all in'' flat fee for service and does not charge individually for executions would be able to comply with a transaction-based fee cap. To comply with the Pilot's transaction-based pricing restrictions, non-exchange venues may be required to entirely restructure their customer relationships to move to a transaction-based pricing model for the duration of the Pilot, which would impose notable costs on those venues. Further, any alternative design would address other inducements provided by non-exchange trading centers aside from transaction-based fees and rebates, in order to produce a fully accurate analysis of the impact of fees and inducements on order routing behavior, market quality, and execution quality. Such a design would be much more complex that the current Proposal. Finally, an alternative design that included non-exchange trading centers also would impose costs on such venues that would be higher relative to the costs imposed on exchanges under the current design, because the Pilot would require non-exchange trading venues to track and report more detailed information than is currently required by the

[1023] *See* Section II.A.4 for a summary of these comments. Some commenters believed that non-exchange trading centers should only be subject to the rebate prohibitions of the no-rebate Test Group. *See, e.g.,* Capital Group Letter, at 3; AJO Letter, at 1; Nasdaq Letter III, at 9.

[1024] NYSE Letter I, at 9. *See also, e.g.,* Cboe Letter I, at 12, 19; Nasdaq Letter I, at 2, 5; ViableMkts Letter, at 1–2.

[1025] Wellington Letter, at 2. *See also, e.g.,* Oppenheimer Letter, at 3. One commenter also believed that the Pilot could affect the way that securities are traded off-exchange and confound the Commission's ability to understand the baseline for remuneration occurring off-exchange or the impact that the Pilot has on that baseline. Nasdaq Letter I, at 7. The Commission does not believe that its ability to analyze the impact of changes to transaction-based fees and rebates will be unduly limited, due to information that is now available from Regulation ATS–N and Rule 606.

[1026] *See, e.g.,* Morgan Stanley Letter, at 3 n.5; BIDS Letter, at 1–2; AJO Letter, at 2.

[1027] *See, e.g.,* AJO Letter, at 2–3. It is possible that non-exchange trading venues might respond to the Pilot by choosing to change their existing fee structures to align with the maker-taker (or taker-maker) pricing models employed by exchanges, which could lead to additional costs for such venues. *See, e.g.,* Virtu Letter, at 6; SIFMA Letter, at 5; Clearpool Letter, at 4; Healthy Markets Letter I, at 9–10.

Commission.[1028] As discussed above, exchanges are required to file each fee change with the Commission on Form 19b–4 and to disclose the entirety of their schedule of fees on their website, while non-exchanges venues are not subject to those requirements. Thus, including non-exchange trading venues in an alternative version of the Pilot would likely increase the costs of the Pilot because it would require a dramatic shift in the disclosure regime for these trading centers.

Although the Pilot excludes non-exchange trading centers, the Commission will still be able to obtain information regarding the proportion of trades executing on such platforms from several sources. First, several transaction datasets, including trade reporting facility (TRF) data and TAQ data, provide information on off-exchange trades, including ATS trades. Further, FINRA produces periodic (weekly) data on the total shares of NMS securities executed on individual ATSs.[1029] Thus, researchers would obtain information from the Pilot to identify whether exogenous shocks to transaction-based fees on exchanges have an effect on order routing decisions, including whether broker-dealers alter their routing of order to ATSs during the Pilot.

3. Trade-At Test Group

The Commission considered an alternative in which the Transaction Fee Pilot would include a ''trade-at'' provision in conjunction with the changes to the fees and rebates currently in the Pilot. The trade-at alternative would require that orders be routed to a market with the best displayed price or are executed at a materially improved price.

Some commenters supported including a trade-at subgroup to provide supplemental information to the Commission about how a combination of trade-at provisions coupled with revisions to transaction-based fees and rebates affect broker-dealer order routing decisions.[1030] Some other commenters, however, asserted that including a trade-at requirement could compromise the results of the Pilot as it would introduce an additional variable to one or more treatment groups.[1031] To address this concern, the Pilot could include separate test subgroups that also include a trade-at requirement, in addition to requirements regarding transaction fees and/or rebates.

Such an approach would require including more stocks in the Pilot. If the amount of securities in each Test Group were too small, the Pilot results would not achieve statistical power. Accordingly, in order to provide information on the impacts of an exogenous shock to transaction fees and rebates while also providing additional information on the effects of a trade-at requirement, the Pilot either would need to increase the number of Pilot securities or add to its duration.

The expected impact on liquidity of the inclusion of a trade-at test group is unclear. The recently concluded Tick Size Pilot included a trade-at test group. The Tick Size Pilot included a trade-at group because exchanges were concerned that, in the current market environment, a significantly larger tick size could induce order flow to go off exchange.[1032] For the Transaction Fee Pilot, commenters were split on whether marketable order flow will be more or less likely to flow to off-exchange trading centers, with some believing that as access fees for some test groups decline, order flow could be drawn back to exchanges. However, in considering the Tick Size Pilot, it is important to note that it only considered the impacts of trade-at when the tick size was increased and only for smaller, less liquid stocks. The effects might not be the same with 1 cent tick size and more liquid stocks that are included in the Pilot. One commenter noted that in the trade-at test group for the Tick Size Pilot, the number of shares displayed at the NBBO increased and quote volatility was reduced in the trade-at test group relative to the other test groups.[1033] Nevertheless, analysis of the Tick Size Pilot data does not reveal significant execution quality or market quality effects of a trade-at rule. Specifically, the data suggests there was no change in effective spreads or price efficiency due to the trade-at requirement.[1034] Results from the Tick Size Pilot also suggest that trade-at impacts trade location. Specifically, off-exchange share of trading volume decreased and on-exchange market share increased, particularly at inverted exchanges. However, volume for midpoint crossing off-exchange venues increased, but this could be the result of the midpoint exception to the Tick Size Pilot's trade-at requirements.[1035] This shift in trading volume may occur because a trade-at provision increases incentives to display prices because off-exchange trading centers would no longer be able to match the best price offered elsewhere, but instead would have to provide significant price improvement or start displaying their quotes at the NBBO. These findings suggest that the inclusion of a trade-at test group may benefit exchanges, which may experience increased trading volumes, but be costly for off-exchange venues, which may lose trading volume.

4. Alternative Pilot

One commenter suggested an alternative to the Pilot that would involve directly lowering the Rule 610(c) access fee cap to $0.0010 and establishing a moratorium on fee increases for existing market data, connectivity, and co-location services.[1036] The commenter believed its alternative would allow a direct test of the ''anachronistic'' 610(c) fee cap level and make exchange fees more competitive with non-exchange venues.[1037] In addition, similar to the other alternative discussed directly above, it would impose a lower cap on

[1028] Although Form ATS–N requires ATSs to provide public disclosures about the different types of fees they charge, along with the ranges of those fees and service bundling, these disclosures do not provide as much information as the fee disclosures that will be required by the Pilot.

[1029] By combining the FINRA volume data executed by ATSs for a given security with other data, such as TAQ, which would provide total share volume for a given security, a researcher would be able to estimate the fraction of ATS trading as a percentage of total trading in NMS securities over the same time period.

[1030] *See, e.g.,* Adorney Letter, at 1; Birch Bay Letter, at 1; NYSE Letter II, at 5.

[1031] *See, e.g.,* See Citadel Letter, at 6; Fidelity Letter, at 10; Citigroup Letter, at 3; SIFMA Letter, at 4; TD Ameritrade Letter, at 7; Virtu Letter, at 5; ICI Letter I, at 2.

[1032] *See* Tick Size Pilot Approval Order at 27538–42. As discussed above in Section IV.D.2, a number of commenters have expressed similar concerns with respect to the Transaction Fee Pilot, whereby a reduction in rebates could widen spreads and lead to a migration of order flow to off-exchange trading centers. In the Tick Size Pilot, the trade-at provision applied when the tick size was increased and only smaller, less liquid stocks were included in that pilot. The Transaction Fee Pilot, on the other hand, also will include more liquid stocks and does not test the wider tick increments that were the subject of the Tick Size Pilot, so the effects of trade-at may or may not be the same between the two pilots.

[1033] *See* Birch Bay Capital Letter, at 1. Other commenters that supported the inclusion of a trade-at test group. *See, e.g.,* C&C Letter, at 1. *But see* Citadel Letter, at 6 (noting that there was no evidence of improvement in market quality in the trade-at test groups in the Tick Size Pilot).

[1034] *Id.* at 990. *See also* Farley, Ryan and Eric Kelley and Walter Puckett, Dark Trading Volume and Market Quality: A Natural Experiment (April 3, 2018) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3088715.*

[1035] *See* Comerton-Forde, Carole and Gregoire, Vincent and Zhong, Zhuo, Inverted Fee Structures, Tick Size, and Market Quality (August 10, 2018), Journal of Financial Economics (JFE), Forthcoming, *available at* SSRN: *https://ssrn.com/abstract=2939012* or *http://dx.doi.org/10.2139/ssrn.2939012.*

[1036] *See* NYSE Letter III, at 3; *see also* Issuer Network Letter II, at 4.

[1037] *See id.*

all NMS stocks simultaneously and thereby address the potential competitive impact on largely identical ETPs and listed issuers. The commenter suggested this alternative would reduce the complexity of implementation and would avoid ''introducing new classes of restrictions'' including prohibition on payment of transaction-based rebates.[1038] Further, in linking transaction fees to market data and connectivity fees, the commenter suggested that its alternative would address commenters' desire ''to reduce their cost to trade'' without banning rebates for liquidity provision, which it argued could negatively impact displayed quotes.[1039]

However, the combined fee cap and moratorium would not feature a control group. While the commenter suggested the Commission could ''use comparisons to the preceding period to evaluate its efficacy,'' the absence of a control group could frustrate researchers' ability to detect changes as the results could be influenced by short-term external events. This alternative also does not directly test the absence of rebates.

Further, the direct link between transaction fees and market data and connectivity fees is unclear in the context of the Pilot's objectives. In particular, the potential distortions that can accompany fee-and-rebate pricing models are unique to exchange transaction fee-and-rebate pricing models and do not directly result from market data and connectivity services. It is therefore unclear how the moratorium on market data fees would impact the objective of the Pilot to study how rebates and fees affect order routing decisions and market quality.

Finally, the commenter's suggested moratorium would only apply to ''existing'' market data and connectivity and would therefore preserve current fee levels for those services and would seem to not restrict an exchange's ability to offer new and improved market data, connectivity, and co-location services potentially at higher fee levels. While a moratorium on market data and connectivity fees during a transaction fee experiment could be beneficial to the extent it holds steady a separate variable that can have a marginal impact on order routing, those costs are fixed and therefore the impact, if any, would be slight. Further, to the extent that exchanges were free to introduce new products at different price points, the moratorium could be easily circumvented. Accordingly, with the exception of the moratorium on market data fees, the suggested alternative is substantively similar to the alternative discussed above to not conduct any pilot and instead proceed to immediately lower the 610(c) fee cap.

5. Adjustments to the Transaction Fee Pilot Structure

The alternatives described above provide significant revisions to the approach or the representativeness of the Transaction Fee Pilot. This section complements and expands on the discussion in Section II.C., above, to discuss a number of alternatives and adjustments to the basic structure of the Pilot. These include an alternative time frame for the Pilot duration or the pre- and post-Pilot Periods, a zero access fee test group, alternative access fee caps, and the inclusion of non-displayed liquidity or depth-of-book provisions in Test Group 1.

a. Length of the Core Pilot

The core Pilot would last for two years with an automatic sunset at the end of the first year unless the Commission publishes a notice determining that the Pilot shall continue for up to one additional year.[1040] Alternatively, the Pilot could feature an earlier or later Pilot sunset or a longer or shorter Pilot duration. As discussed above in Section II.D., a number of commenters discussed the proposed Pilot duration, with some believing the proposed duration would incentivize participation and disincentivize ''waiting out'' the Pilot, with others believing that a shorter duration would be sufficient to produce results and still others recommending that the Pilot run for a full two year period with no automatic sunset. Further, one commenter questioned the Commission's statement that the market reacts quickly to pricing changes implemented by exchanges, but that some market participants might not change their behavior unless the Pilot was in place for at least a year.[1041]

As alternatives to the Pilot's duration, the Commission considered an earlier Pilot sunset that would shorten the anticipated Pilot duration, reducing the time period during which potential negative (or positive) temporary effects resulting from the Pilot could occur. However, if the anticipated duration of the Pilot were too short, some broker-dealers could choose to not alter their current order routing behavior and wait out the length of the Pilot, which would limit the usefulness of the information obtained by the Pilot.[1042] In other words, in response to the comment noted above, while many market participants may quickly adopt their order routing in response to fee and rebate changes, others may take longer to respond. A shorter anticipated duration also could reduce the usefulness of the information and the benefits provided by the Pilot, if it reduced the statistical power of any analyses, because it would make it more difficult for researchers to detect whether an effect actually exists.[1043]

Conversely, as the anticipated Pilot duration increases so too would the costs for exchanges, as this would extend the duration of the changes to their revenue models and the costs of compliance with the Pilot requirements. However, all else being equal, increasing the duration beyond the automatic sunset at one year, or up to the maximum two years, is unlikely to provide any significant increases in the benefits identified above, unless some event occurs during the first year that impacts the Pilot study in a way that potentially could make the results unrepresentative, in which case an extension of the Pilot for additional time (up to two years) could increase the benefits. As discussed in Section IV.C.1.a.i, the Commission believes that the Pilot duration with a one-year sunset would make it economically worthwhile for broker-dealers to alter their order-routing decisions, because it would likely be costly for broker-dealers to sit out the full duration of the Pilot or retain pre-Pilot order routing decisions for its duration. Further, a longer Pilot duration would increase the exposure of market participants to the uncertain outcomes of the pilot in terms of liquidity, trading volume, market

[1038] *See id.* The commenter also suggested that avoiding this ''new class of restrictions'' would limit the ''likelihood of court challenge'' to the Pilot. *Id.*

[1039] *See id.*

[1040] *See supra* Section II.D. for a summary and discussion of the commenters discussing the Pilot's proposed duration.

[1041] *See* NYSE Letter I, at 16.

[1042] *See infra* Section IV.C.1.a.iii, which discusses the potential limitations associated with pilots, including a discussion that some market participants could choose to not alter their behavior if the Pilot had a short duration.

[1043] To address commenter concerns about the size of the Pilot, the Commission performed a supplemental analysis that refined the power analysis included in the Proposing Release. Based on this refined power analysis, the Commission estimates that it would require a minimum Pilot duration of 12 months to achieve sufficient statistical power to detect whether an effect is actually present; therefore, any Pilot duration shorter than 12 months would have diminished ability to detect the effect of transaction-based fees and rebates on order routing decisions, execution quality, and market quality. *See* Section IV.C.1.a.ii.(1) and *supra* note 695 for further information on this supplemental analysis.

share, competition etc. that are discussed above.

The Commission could alternatively adopt a pilot with a fixed two-year duration. A two-year pilot without the possibility of an automatic sunset at the end of the first year would have the same maximum costs as a pilot with a sunset, but would not have the potential to reduce costs in the event that the sunset occurs. On the other hand, broker-dealers could perceive higher expected costs of not adapting to the Pilot under the alternative because they could expect the sunset to reduce the anticipated duration of the Pilot. However, the Commission believes that broker-dealers that base their order routing decisions on transaction-based fees and rebates will incur sufficient costs from not enacting changes to their order routing decisions in response to the Pilot with an expected one-year sunset such that they are not likely to sit out the Pilot Period; therefore, a mandatory two-year pilot would not likely provide any additional behavioral change that would not already be obtainable from the Pilot.

b. Length of Pre- and Post-Pilot Periods

The Pilot requires a six-month pre-Pilot Period and a six-month post-Pilot Period, which would allow the Commission and the public to compare order routing decisions in the same stocks both with and without the Pilot restrictions as well as across stocks in different test groups. Alternatively, the Commission could adopt shorter pre-Pilot and post-Pilot Periods, which a few commenters recommended.[1044] Shorter pre- and post-Pilot Periods would reduce costs to exchanges of having to provide the Exchange Transaction Fee Summary and order routing data. These reduced costs come at the trade-off of shorter horizons for data collection that could lead to reduced statistical power and reduced ability of the Pilot to produce representative results.[1045]

In particular, a short pre-Pilot Period introduces additional risk that analysis of certain Pilot data may be uninformative. Even if researchers were to wait until the conclusion of the post-Pilot period to begin analysis, they may not be able to identify the effects of the Pilot because data obtained from the post-Pilot period could be confounded by information about the Pilot. For example, if exchanges alter their fee structures in the post-Pilot period as a result of the Pilot (rather than revert back to their fee models in effect prior to the Pilot), data from the post-Pilot period likely would be unable to supplement or substitute for data obtained from a shorter pre-Pilot Period, underscoring the importance of a longer pre-Pilot Period. Thus, the value of any analyses obtained from the Pilot may be limited, thereby reducing the information obtained from such analyses for any potential regulatory recommendations.

c. Zero Access Fee Test Group

As discussed above, a few commenters recommended that the Pilot include a zero access fee test group to further test the relationship between exchange fee models and order routing, which would effectively serve to temporarily remove a source of revenue for exchanges entirely from a subset of securities.[1046] This approach could produce additional information, such as how order routing behavior and execution quality change in the absence of transaction-based fees (and likely rebates), that could be useful to the Commission to facilitate future policy decisions regarding the transaction-based pricing structures of exchanges.

The inclusion of a zero access fee test group would eliminate the transaction-based fee model for a subset of securities, which could force exchanges to create entirely new revenue models for securities in this test group with uncertain outcomes for both exchanges and market participants. Doing so presents the risk that if coupled to the current Pilot, the inclusion of a zero access fee test group could contaminate the analysis of both the current test groups and the zero access fee test group. This could occur if exchanges determine that it is cheaper to subsidize trading in the zero access fee group with revenue earned from the control group and the other test groups. In this case the inclusion of the zero access fee test group would alter the behavior of the exchanges with regard to all their other securities, which would weaken the exogeneity of the shock imposed by the Pilot for all test groups.

d. Alternative Test Groups

As discussed above, the Pilot will have two test groups: (1) One that caps access fees at $0.0010 and (2) one that prohibits rebates or Linked Pricing for displayed and non-displayed liquidity and along the entire depth of the limit order book. Alternatively, the Commission could have proposed other test groups with different caps on access fees. For example, the Commission could instead have proposed only caps on access fees (*i.e.,* fees for removing liquidity), similar to those in the EMSAC recommendation,[1047] or could have increased the number of test groups to test more gradations in alternative fee caps. As a few commenters suggested, and as discussed above, the Commission also could have included a test group with a higher fee cap level than Rule 610(c) or no cap on fees at all.[1048] Further, as discussed above, a few commenters suggested other alternatives, like basis point pricing or pricing based on the tick size.

Many alternatives would have replaced the no-rebate test group with another access fee cap group. These options could provide information to help refine the analysis of the impact of access fees on various market outcomes. However, if the Pilot did not include a no-rebate test group and only studied exogenous shocks to access fees, it would produce more limited information about the role that rebates play in affecting market outcomes. As discussed in more detail above, the Commission believes that it is important to have a test group that specifically focuses on the removal of rebates and the corresponding impact on conflicts of interest, execution quality, and market quality.

An alternative to increase the number of test groups to study the impact of the various levels of access fee on various market outcomes could produce additional refinement to the data currently in the Pilot. However, to produce more gradation in the caps to access fees, would increase the complexity of the Pilot, and potentially increase the implementation costs to account for the additional test groups. Increasing the number of test groups would also increase the number of stocks subject to the pilot thereby increasing the fraction of the market exposed to the uncertain outcomes of the Pilot.

e. Non-Displayed Liquidity and Depth of Book

Only Test Group 2, which eliminates rebates or Linked Pricing, would restrict

[1044] *See* IEX Letter I, at 4; FIA Letter, at 4. *But cf.* FIF Letter, at 9; Health Markets Letter I, at 19.

[1045] The Commission staff estimates that with the given number of stocks in the Pilot, that the Pilot would need to produce approximately six months of pre and post Pilot data to detect changes unique to ETPs and stocks, The power tests determined the number of days of data that would be required to detect a 10% change in the daily volume of various subgroups of securities for stocks and a 10% change in quoted spreads for ETPs.

[1046] *See, e.g.,* Healthy Markets Letter I, at 8; OMERS Letter, at 2.

[1047] The maximum access fee caps under the EMSAC recommendation would be $0.0020 (Test Group 1), $0.0010 (Test Group 2), and $0.0002 (Test Group 3).

[1048] *See, e.g.,* Angel Letter II, at 2; Cboe Letter I, at 28

fees or rebates or Linked Pricing in non-displayed liquidity and depth-of-book, though a small number of commenters suggested expanding those conditions to Test Group 1.[1049] As discussed in Section II.C., under the Pilot, incentives to move liquidity away from the displayed liquidity or the top-of-book could be created if rebates are not eliminated along the entire depth of the book as well as for displayed and non-displayed liquidity. If an exchange were to offer rebates for those types of orders, it would reduce the benefits of the no-rebate test group as it would inhibit the Commission's ability to collect data on a treatment group in which rebates do not exist and thus cannot impact or potentially distort the markets and market participants.

An alternative could have applied the transaction fee restrictions in Test Group 1 to both non-displayed liquidity and the depth-of-book. However, the Commission believes this is unnecessary. In particular, the Commission does not believe that exchanges would have the incentive to charge higher fees or pay higher rebates for executions against or of non-displayed and depth of book compared to fees and rebates charged against or of top-of book depth in Test Group 1 securities. Unlike the problem associated with exchanges offering rebates (in the no-rebate test group) for these types of orders that could emerge if rebates or Linked Pricing were not prohibited across the entire depth of the limit order book, the Commission does not believe that under the Pilot incentives would emerge for exchanges to charge higher fees to access non-displayed interest or depth-of-book quotes. Charging more for non-displayed liquidity as well as the depth of the limit order book would lead to increased uncertainty for market participants that take liquidity, as they would not be able to control whether their executions are with displayed or non-displayed liquidity and would be uncertain of their fees when they enter their orders. If the fees differed between displayed and non-displayed liquidity, broker-dealers would face cost uncertainty when making routing decisions over what access fees they would incur. From the exchanges' perspective, having differing fees for posting or interacting with displayed and non-displayed liquidity would be burdensome to track and more costly to administer and, to the extent the uncertainty it creates dissuades market participants from routing to their market, could ultimately cause them to lose order flow.

f. Linked Pricing

Test Group 2 will prohibit rebates and Linked Pricing. As discussed above, a few commenters suggested that the Commission also prohibit exchanges from offering other inducements, including discounts on *non*-transaction fees that are linked to trading volumes in the no-rebate Test Group.[1050] While such an approach would have the added benefit of testing a greater absence of exchange-offered inducements, it would further increase costs and add to the complexity and scope of the Pilot. As currently designed, the no-rebate Test Group is intended to test the extent to which exchange rebates introduce potential distortions to execution quality and market quality and introduce conflicts of interest in order routing. Adding more variables to the Pilot will increase its complexity, size, and cost, while potentially reducing benefits by inhibiting the Commission's stated focus on gathering data specifically on the impact of exchange transaction rebates. With more variables, it becomes difficult to isolate the impact of any particular change without dramatically expanding the size, scope, and complexity of the Pilot.

Alternatively, the Commission could instead prohibit only rebates, without also prohibiting Linked Pricing, in Test Group 2. While such an approach would reduce costs and simplify the Pilot design, it could reduce the benefits of Test Group 2. Specifically, one of the aims of Test Group 2 is to examine the impact between take fees (rebates) and make rebates (fees) in current exchange fee-and-rebate pricing models. For example, as discussed above, fees may be set above their equilibrium price (within the current regulatory structure) in order to subsidize rebates. An alternative that prohibits rebates but not the ability of an exchange to cross-subsidize make rebates from take fees (or vice versa) would provide opportunities for exchanges to work around the rebate prohibition thus perpetuating the potential subsidization distortion. Consequently, such an alternative would reduce the benefits of Test Group 2 by reducing the effectiveness of the information received about NMS stocks in the no-rebate Test Group.

Finally, the Commission could ban Linked Pricing for all market participants in Test Group 2, including market makers. This alternative would allow the Commission to study how markets react in the absence of both rebates and Linked Pricing incentives, whereas the adopted Rule does not allow this analysis. The Commission recognizes that banning Linked Pricing in Test Group 2 may yield different results than under the adopted Rule, which permits an exchange to adopt rules to provide non-rebate Linked Pricing to its registered market makers in consideration for the market maker meeting rules-based market quality metrics. However, the Commission is interested in specifically exploring the effect of eliminating rebates, but continuing to allow Linked Pricing for a narrow, targeted segment of the market, *i.e.,* market makers with specific obligations designed to improve an exchange's market quality without the various effects previously discussed that may be associated with rebates, in order to understand any effects of rebates on liquidity. In so much as this is an alternative that could be considered at the completion of the Pilot, the Commission seeks to test specifically for this scenario.

g. Execution Quality Data

The Pilot does not require the exchanges to produce publicly available information on order execution quality statistics. As an alternative, the Commission could require that the exchanges produce daily order execution quality statistics similar to that required in Appendix B.1 of the Tick Size Pilot Plan. Compared to the Pilot, this alternative could provide information on order-based measures of execution quality such as effective spreads, price improvement, and realized spreads for liquidity taking orders, in addition to the trade-based measures available from public data sources. As noted in the baseline, order-based measures of execution quality from the incorporation of order size and the costs of latency. Exchanges currently have systems in place to produce daily order-based execution quality data, which would limit implementation costs. However, the Commission recognizes that exchanges incur ongoing costs to produce these data.

Unlike for the Tick Size Pilot, the Commission does not believe that daily order-based execution quality statistics are as important for the Transaction Fee Pilot as it was for the Tick Size Pilot and that the benefits for the Transaction Fee Pilot could be marginal. In particular, the Commission believes that trade-based execution quality statistics will be sufficient to measure execution quality for liquidity taking orders and notes that the order routing data to be received by the Commission will contain data that

[1049] *See* Clearpool Letter, at 3–4; Healthy Markets Letter I, at 16.

[1050] *See* RBC Letter I, at 3; MFS Letter, at 2–3.

can facilitate the measurement of execution quality for liquidity providing orders.

h. Excluding or Rotating Securities

As discussed above in Section II.B., some commenters were concerned that the Pilot could introduce unintended adverse competitive effects for ETPs or corporate issuers that were placed in certain test groups if those test groups resulted in negative impacts on the trading characteristics of those securities. Accordingly, some commenters, discussed above, recommended either excluding ETPs from the Pilot, clustering ETPs following similar strategies into a single test group, or rotate ETPs through the various test groups and the control group.[1051] Other commenters, discussed above, suggested allowing issuers to opt out of the Pilot.[1052] The benefits of such an approach would be the avoidance of potential harm or disparate impact on a particular ETP or issuer vis-à-vis its peers and primary competitors. As discussed more fully above, that potential for harm is uncertain at best and commenters held deeply conflicting views with some asserting that the Pilot could cause widespread harm while others argued that its impact will be mostly positive when considering the potential distortions that will be mitigated or alleviated in the absence of exchange rebates or lower fees.

Although there is a potential for temporary competitive effects as a result of the Pilot, outright exclusion of ETPs or clustering like ETPs in the same test group would harm the representativeness of the data produced by the Pilot or the ability of the Pilot to facilitate causal analyses. Exclusion of ETPs, for example, could undermine the ability of the Commission to use the Pilot results to inform future policy making with respect to exchange fees, particularly if ETPs have the potential to respond differently to changes to fees and rebates than do other types of NMS stocks.

Similarly, as discussed above, allowing issuers to opt out of the Pilot could undermine the representativeness of the Pilot's treatment groups and potentially bias the Pilot's results, depending on the number of issuers that opt out and whether some unobservable characteristic is correlated with both an issuer's decision to opt out and market outcomes. In turn, the benefits of the Pilot would be reduced if researchers are less able to draw specific conclusions about the impact of the Pilot as a result of issuers opting out of the Pilot.

Another alternative solution would be to rotate all stocks and or ETPs through each of the test groups for a given amount of time such that all stocks and ETPs spend the same amount of time in each test group. This methodology would reduce potential costs by mitigating potential competitive effects of the Pilot on issuers by ensuring that all stocks and ETPs receive similar exposure to each test group. Rotation would also have the advantage of allowing many more changes from one test group to another, which would create additional independent observations about the effect of the Pilot on various outcomes, potentially increasing statistical power.

The realization of the benefit of additional statistical power would depend on how broker-dealers react to the changes. If broker-dealers need to adjust after every change, the statistical power could be lower with rotation than without. To the extent that broker-dealers design their order routing algorithms to the test group, then the time needed for broker-dealers to adapt to a set of Pilot securities that changes every few months would be minimal. The broker-dealer would simply replace one list of securities in a given test group with another. In this case there would likely be a period at the beginning of the Pilot where broker-dealers experiment somewhat to optimize their algorithms in which the data on broker dealer behavior would be noisier, but after that initial adjustment, broker-dealers would not need to repeat their experimentation after every rotation. However, to the extent that broker-dealers' order routing algorithms are bespoke to a given security, rotation could decrease the statistical power of the tests because each rotation would include a period of time during which broker-dealers adjust where the data is noisier and harder to extract a signal from.

This alternative, however, is also likely to be more complex and have higher costs than the Pilot. The exchange compliance costs of rotation would be marginally greater than the compliance costs of the Pilot because it would involve additional compliance checks and complexity, but would likely be largely automated. The added complexity for exchanges could be more significant because complexity increases the risk of errors. To the extent that broker-dealers set up their systems to automate the rotation, they, too would have only marginally higher costs with rotation. However, to the extent that broker-dealers' order routing algorithms are bespoke to a given security, then rotation would be both more costly for broker-dealers who would have to re-optimize their algorithms every time a stock is included or excluded from a given test group.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'')[1053] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The Commission certified, pursuant to section 605(b) of the RFA,[1054] that, if adopted, Rule 610T would not have a significant impact on a substantial number of small entities.[1055]

The Commission solicited comments regarding this certification and received 1 comment.[1056] The commenter stated that ''the Commission is obligated under the RFA to adequately address the Proposal's costs to small-capitalization issuers covered under the statute.''[1057] The commenter cited *Aeronautical Repair Station Ass'n* v. *FAA* as support for its assertion that the RFA requires the Commission to take into account costs to small-capitalization issuers as they are ''third-party entities incur[ing] downstream costs.''[1058] The Commission believes the commenter misconstrues the legal finding in the case to which it cited, as the case confirms the general premise that the RFA analysis shall focus on the impact of a rule on a substantial number of small entities that are ''directly affected and therefore regulated by,'' in other words subject to, such rule's requirements.[1059] For purposes of the Commission rulemaking in connection with the RFA, Rule 610T, by its terms, applies only to national securities exchanges registered with the Commission under Section 6 of the Exchange Act.[1060]

[1051] *See supra* Section II.B.

[1052] *See id.*

[1053] 5 U.S.C. 601 *et seq.*

[1054] 5 U.S.C. 605(b).

[1055] The Pilot is discussed in detail in Sections I and II, above. We discuss the potential economic consequences, including the estimated compliance costs and burdens, of the Pilot in Section IV (Economic Analysis) and Section III (Paperwork Reduction Act) above.

[1056] *See* NYSE Letter I, at 13–14.

[1057] *Id.* at 14, n.50.

[1058] *See id.* (citing 494 F.3d 161, 177 (D.C. Cir. 2007)).

[1059] *See Aeronautical Repair Station Ass'n* v. *FAA,* 494 F.3d 161, 177 (D.C. Cir. 2007) (further stating that the RFA ''requires that the agency conduct the relevant analysis or certify 'no impact' for those small businesses that are 'subject to' the regulation, that is, those to which the regulation 'will apply.' '').

[1060] *See supra* Sections III (Paperwork Reduction Act) and IV (Economic Analysis) (discussing, among other things, the current market environment and compliance obligations for national securities exchanges).

With regard to a national securities exchange, the Commission's definition of a small entity is an exchange that has been exempt from the reporting requirements of 17 CFR 242.601 (Rule 601 of Regulation NMS), and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[1061] None of the national securities exchanges registered under Section 6 of the Exchange Act that would be subject to the Pilot are ''small entities'' for purposes of the RFA. In particular, none of the equities exchanges are exempt from Rule 601 of Regulation NMS. Accordingly, the proposed rule will not apply to any ''small entities.'' Therefore, for the foregoing reasons, the Commission again certifies that Rule 610T will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VI. Statutory Authority and Text of the Rule Amendments

Pursuant to the Exchange Act, and particularly Sections 3(b), 5, 6, 11A, 15, 17, and 23(a) thereof, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78o, 78q, and 78w(a), the Commission amends title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends 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 in part as follows:

Authority: 15 U.S.C. 77c, 77*o*, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78*o*–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Amend § 200.30–3 by adding (a)(84) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Trading and Markets.

* * * * *

(a) * * *

(84) To issue notices pursuant to 17 CFR 242.610T(b)(1)(i) and (c) (Rule 610T(b)(1)(i) and (c)).

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AC, NMS AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78*o*(b), 78*o*(c), 78*o*(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 4. Add § 242.610T to read as follows:

§ 242. 610T Equity transaction fee pilot.

(a) *Pilot pricing restrictions.* Notwithstanding § 242.610(c), on a pilot basis for the period specified in paragraph (c) of this section, in connection with a transaction in an NMS stock, a national securities exchange shall not:

(1) For *Test Group 1,* impose, or permit to be imposed, any fee or fees for the display of, or execution against, the displayed best bid or best offer of such market that exceed or accumulate to more than *$0.0010* per share;

(2) For *Test Group 2,* provide to any person, or permit to be provided to any person, a rebate or other remuneration in connection with an execution, or offer, or permit to be offered, any linked pricing that provides a discount or incentive on transaction fees applicable to removing (providing) liquidity that is linked to providing (removing) liquidity, except to the extent the exchange has a rule to provide non-rebate linked pricing to its registered market makers in consideration for meeting market quality metrics; and

(3) For the *Control Group,* impose, or permit to be imposed, any fee or fees in contravention of the limits specified in § 242.610(c).

(b) *Pilot securities*—(1) *Initial List of Pilot Securities.* (i) The Commission shall designate by notice the initial List of Pilot Securities, and shall assign each Pilot Security to one Test Group or the Control Group. Further, the Commission may designate by notice the assignment of NMS stocks that are interlisted on a Canadian securities exchange to Test Group 2 or the Control Group.

(ii) For purposes of this section, ''Pilot Securities'' means the NMS stocks designated by the Commission on the initial List of Pilot Securities pursuant to paragraph (b)(1)(i) of this section and any successors to such NMS stocks. At the time of selection by the Commission, an NMS stock must have a minimum share price of $2 to be included in the Pilot and must have an unlimited duration or a duration beyond the end of the post-Pilot Period. In addition, an NMS stock must have an average daily volume of 30,000 shares or more to be included in the Pilot. If the share price of a Pilot Security in one of the Test Groups or the Control Group closes below $1 at the end of a trading day, it shall be removed from the Pilot.

(iii) For purposes of this section, ''primary listing exchange'' means the national securities exchange on which the NMS stock is listed. If an NMS stock is listed on more than one national securities exchange, the national securities exchange upon which the NMS stock has been listed the longest shall be the primary listing exchange.

(2) *Pilot Securities Exchange Lists.* (i) After the Commission selects the initial List of Pilot Securities and prior to the beginning of trading on the first day of the Pilot Period each primary listing exchange shall publicly post on its website downloadable files containing a list, in pipe-delimited ASCII format, of the Pilot Securities for which the exchange serves as the primary listing exchange. Each primary listing exchange shall maintain and update this list as necessary prior to the beginning of trading on each business day that the U.S. equities markets are open for trading through the end of the post-Pilot Period.

(ii) The Pilot Securities Exchange Lists shall contain the following fields:

(A) Ticker Symbol;
(B) Security Name;
(C) Primary Listing Exchange;
(D) Security Type:
(*1*) Common Stock;
(*2*) ETP;
(*3*) Preferred Stock;
(*4*) Warrant;
(*5*) Closed-End Fund;
(*6*) Structured Product;
(*7*) ADR; and
(*8*) Other;
(E) Pilot Group:
(*1*) Control Group;
(*2*) Test Group 1; and
(*3*) Test Group 2;
(F) Stratum Code; and
(G) Date the Entry Was Last Updated.

(3) *Pilot Securities Change Lists.* (i) Prior to the beginning of trading on each trading day the U.S. equities markets are open for trading throughout the end of the post-Pilot Period, each primary listing exchange shall publicly post on its website downloadable files containing a Pilot Securities Change List, in pipe-delimited ASCII format, that lists each separate change applicable to any Pilot Securities for

[1061] *See* 17 CFR 240.0–10(e).

which it serves or has served as the primary listing exchange. The Pilot Securities Change List will provide a cumulative list of all changes to the Pilot Securities that the primary listing exchange has made to the Pilot Securities Exchange List published pursuant to paragraph (b)(2) of this section.

(ii) In addition to the fields required for the Pilot Securities Exchange List, the Pilot Securities Change Lists shall contain the following fields:

(A) New Ticker Symbol (if applicable);

(B) New Security Name (if applicable);

(C) Deleted Date (if applicable);

(D) Date Security Closed Below $1 (if applicable);

(E) Effective Date of Change; and

(F) Reason for the Change.

(4) *Posting requirement.* All information publicly posted in downloadable files pursuant to paragraphs (b)(2) and (3) of this section shall be and remain freely and persistently available and easily accessible by the general public on the primary listing exchange's website for a period of not less than five years from the conclusion of the post-Pilot Period. In addition, the information shall be presented in a manner that facilitates access by machines without encumbrance, and shall not be subject to any restrictions, including restrictions on access, retrieval, distribution and reuse.

(c) *Pilot duration.* (1) The Pilot shall include:

(i) A six-month ''pre-Pilot Period;''

(ii) A two-year ''Pilot Period'' with an automatic sunset at the end of the first year unless, no later than thirty days prior to that time, the Commission publishes a notice that the Pilot shall continue for up to one additional year; and

(iii) A six-month ''post-Pilot Period.''

(2) The Commission shall designate by notice the commencement and termination dates of the pre-Pilot Period, Pilot Period, and post-Pilot Period, including any suspension of the one-year sunset of the Pilot Period.

(d) *Order routing datasets.* Throughout the duration of the Pilot, including the pre-Pilot Period and post-Pilot Period, each national securities exchange that facilitates trading in NMS stocks shall prepare and transmit to the Commission a file, in pipe-delimited ASCII format, no later than the last day of each month, containing sets of order routing data, for the prior month, in accordance with the specifications in paragraphs (d)(1) and (2) of this section. For the pre-Pilot Period, order routing datasets shall include each NMS stock. For the Pilot Period and post-Pilot Period, order routing datasets shall include each Pilot Security. Each national securities exchange shall treat the order routing datasets as regulatory information and shall not access or use that information for any commercial or non-regulatory purpose.

(1) Dataset of daily volume statistics, with field names as the first record and a consistent naming convention that indicates the exchange and date of the file, that include the following specifications of liquidity-providing orders by security and separating orders by order designation (exchanges may exclude auction orders) and order capacity:

(i) Code identifying the submitting exchange.

(ii) Eight-digit code identifying the date of the calendar day of trading in the format ''yyyymmdd.''

(iii) Symbol assigned to an NMS stock (including ETPs) under the national market system plan to which the consolidated best bid and offer for such a security are disseminated.

(iv) The broker-dealer's CRD number and MPID.

(v) Order type code:

(A) Inside-the-quote orders;

(B) At-the-quote limit orders; and

(C) Near-the-quote limit orders.

(vi) Order size codes:

(A) <100 share bucket;

(B) 100–499 share bucket;

(C) 500–1,999 share bucket;

(D) 2,000–4,999 share bucket;

(E) 5,000–9,999 share bucket; and

(F) ≥10,000 share bucket.

(vii) Number of orders received.

(viii) Cumulative number of shares of orders received.

(ix) Cumulative number of shares of orders cancelled prior to execution.

(x) Cumulative number of shares of orders executed at receiving market center.

(xi) Cumulative number of shares of orders routed to another execution venue.

(xii) Cumulative number of shares of orders executed within:

(A) 0 to < 100 microseconds of order receipt;

(B) 100 microseconds to < 100 milliseconds of order receipt;

(C) 100 milliseconds to < 1 second of order receipt;

(D) 1 second to < 30 seconds of order receipt;

(E) 30 seconds to < 60 seconds of order receipt;

(F) 60 seconds to < 5 minutes of order receipt;

(G) 5 minutes to < 30 minutes of order receipt; and

(H) ≥ 30 minutes of order receipt.

(2) Dataset of daily volume statistics, with field names as the first record and a consistent naming convention that indicates the exchange and date of the file, that include the following specifications of liquidity-taking orders by security and separating orders by order designation (exchanges may exclude auction orders) and order capacity:

(i) Code identifying the submitting exchange.

(ii) Eight-digit code identifying the date of the calendar day of trading in the format ''yyyymmdd.''

(iii) Symbol assigned to an NMS stock (including ETPs) under the national market system plan to which the consolidated best bid and offer for such a security are disseminated.

(iv) The broker-dealer's CRD number and MPID.

(v) Order type code:

(A) Market orders; and

(B) Marketable limit orders.

(vi) Order size codes:

(A) <100 share bucket;

(B) 100–499 share bucket;

(C) 500–1,999 share bucket;

(D) 2,000–4,999 share bucket;

(E) 5,000–9,999 share bucket; and

(F) ≥10,000 share bucket.

(vii) Number of orders received.

(viii) Cumulative number of shares of orders received.

(ix) Cumulative number of shares of orders cancelled prior to execution.

(x) Cumulative number of shares of orders executed at receiving market center.

(xi) Cumulative number of shares of orders routed to another execution venue.

(e) *Exchange Transaction Fee Summary.* Throughout the duration of the Pilot, including the pre-Pilot Period and post-Pilot Period, each national securities exchange that facilitates trading in NMS stocks shall publicly post on its website downloadable files containing information relating to transaction fees and rebates and changes thereto (applicable to securities having a price equal to or greater than $1). Each national securities exchange shall post its initial Exchange Transaction Fee Summary prior to the start of trading on the first day of the pre-Pilot Period and update its Exchange Transaction Fee Summary on a monthly basis within 10 business days of the first day of each calendar month, to reflect data collected for the prior month. The information prescribed by this section shall be made available using the most recent version of the XML schema published on the Commission's website. All information publicly posted pursuant to this

paragraph (e) shall be and remain freely and persistently available and easily accessible on the national securities exchange's website for a period of not less than five years from the conclusion of the post-Pilot Period. In addition, the information shall be presented in a manner that facilitates access by machines without encumbrance, and shall not be subject to any restrictions, including restrictions on access, retrieval, distribution, and reuse. The Exchange Transaction Fee Summary shall contain the following fields:

(1) Exchange Name;

(2) Record Type Indicator:

(i) Reported Fee is the Monthly Average;

(ii) Reported Fee is the Median; and

(iii) Reported Fee is the Spot Monthly;

(3) Participant Type:

(i) Registered Market Maker; and

(ii) All Others;

(4) Pilot Group:

(i) Control Group;

(ii) Test Group 1; and

(iii) Test Group 2;

(5) Applicability to Displayed and Non-Displayed Interest:

(i) Displayed only;

(ii) Non-displayed only; and

(iii) Both displayed and non-displayed;

(6) Applicability to Top and Depth of Book Interest:

(i) Top of book only;

(ii) Depth of book only; and

(iii) Both top and depth of book;

(7) Effective Date of Fee or Rebate;

(8) End Date of Currently Reported Fee or Rebate (if applicable);

(9) Month and Year of the monthly realized reported average and median per share fees and rebates;

(10) Pre/Post Fee Changes Indicator (if applicable) denoting implementation of a new fee or rebate on a day other than the first day of the month;

(11) Base and Top Tier Fee or Rebate:

(i) Take (to remove):

(A) Base Fee/Rebate reflecting the standard amount assessed or rebated before any applicable discounts, tiers, caps, or other incentives are applied; and

(B) Top Tier Fee/Rebate reflecting the amount assessed or rebated after any applicable discounts, tiers, caps, or other incentives are applied; and

(ii) Make (to provide):

(A) Base Fee/Rebate reflecting the standard amount assessed or rebated before any applicable discounts, tiers, caps, or other incentives are applied; and

(B) Top Tier Fee/Rebate reflecting the amount assessed or rebated after any applicable discounts, tiers, caps, or other incentives are applied;

(12) Average Take Fee (Rebate)/Average Make Rebate (Fee), by Participant Type, Test Group, Displayed/Non-Displayed, and Top/Depth of Book; and

(13) Median Take Fee (Rebate)/Median Make Fee (Rebate), by Participant Type, Test Group, Displayed/Non-Displayed, and Top/Depth of Book.

By the Commission.

Dated: December 19, 2018.

Brent J. Fields,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A

Key to Comment Letters Cited in Proposed Transaction Fee Pilot for NMS Stocks (File No. S7–05–18):

1. E-mail from David Adorney, C & C Trading LLC, to Commission, dated March 15, 2018 (''**Adorney E-mail**'').
2. Letter from Peter L. Swan, Professor of Finance, School of Banking and Finance, UNSW Sydney Business School, to Brent J. Fields, Secretary, Commission, dated March 26, 2018 (''**Swan Letter**'').
3. Letter from O. Mason Hawkins, CFA, Chairman & CEO, et al., Southeastern Asset Management, Inc., et al., to Brent J. Fields, Secretary, Commission, dated April 6, 2018 (''**Joint Asset Managers Letter**'').
4. Letter from Adam D. Clark-Joseph, University of Illinois at Urbana-Champaign, to Brent J. Fields, Secretary, Commission, dated April 9, 2018 (''**Clark-Joseph Letter**'').
5. Letter from Brent Woods, Chief Executive Officer, and Joseph Scafidi, Director of Trading, Brandes Investment Partners, to Brent J. Fields, Secretary, Commission, dated April 10, 2018 (''**Brandes Letter**'').
6. Letter from Sal Arnuk and Joe Saluzzi, Partners, Co-Founders and Co-Heads of Equity Trading, Themis Trading LLC, to Brent J. Fields, Secretary, Commission, dated April 27, 2018 (''**Themis Trading Letter I**'').
7. Presentation from the Institutional Equity Division, Morgan Stanley, to the Division of Trading and Markets, Commission, dated May 1, 2018 (''**Morgan Stanley Presentation**'').
8. E-mail from Tim Quast, President, Modern Networks IR LLC, to Brett Redfearn, Director, Division of Trading and Markets, Commission, dated May 2, 2018 (''**ModernIR E-mail**'').
9. Letter from Sean D. Paylor, Trader, AJO, L.P., to Brent J. Fields, Secretary, Commission, dated May 7, 2018 (''**AJO Letter**'').
10. Letter from Tim Quast, President & Founder, Modern Networks IR LLC, to Brent J. Fields, Secretary, Commission, dated May 9, 2018 (''**ModernIR Letter**'').
11. Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Brent J. Fields, Secretary, Commission, dated May 10, 2018 (''**CII Letter**'').
12. Letter from Kelvin To, Founder& President, Data Boiler Technologies, LLC, to Brent J. Fields, Secretary, Commission, dated May 14, 2018 (''**Data Boiler Letter**'').
13. Letter from Chris Barnard to Commission, dated May 14, 2018 (''**Barnard Letter**'').
14. Letter from David Mechner, Chief Executive Officer, Pragma Securities, to Brent J. Fields, Secretary, Commission, dated May 14, 2018 (''**Pragma Letter**'').
15. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission, dated May 15, 2018 (''**MFA Letter**'').
16. Letter from Timothy J. Mahoney, Chief Executive Officer, BIDS Trading L.P., to Brent J. Fields, Secretary, Commission, dated May 15, 2018 (''**BIDS Letter**'').
17. Letter from Brent Robertson, Managing Director, Trading, and Rob Gouley, Principal, Trading, Ontario Municipal Employees Retirement System Administration Corporation, to Brent J. Fields, Secretary, Commission, dated May 15, 2018 (''**OMERS Letter**'').
18. Letter from Marc Lipson, Robert F. Vandell Research Professor, Professor of Business Administration, University of Virginia School, Darden School of Business, to Commission, dated May 15, 2018 (''**Lipson Letter**'').
19. Letter from Anthony W. Godonis, Principal, Director of Trading, Copeland Capital Management, LLC, to Brent J. Fields, Secretary, Commission, dated May 18, 2018 (''**Copeland Letter**'').
20. Letter from George Hessler, CEO, Magma Trading, to Brent J. Fields, Secretary, Commission, dated May 18, 2018 (''**Magma Letter**'').
21. Letter from Eric Swanson, CEO, XTX Markets LLC, to Brent J. Fields,

Secretary, Commission, dated May 22, 2018 (''**XTX Letter**'').
22. Letter from Douglas A. Cifu, Chief Executive Officer, Virtu Financial Inc., to Brent J. Fields, Secretary, Commission, dated May 23, 2018 (''**Virtu Letter**'').
23. Letter from Susan M. Olson, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated May 23, 2018 (''**ICI Letter I**'').
24. Letter from Mary E. Keefe, Managing Director, Regulatory Affairs, Nuveen, LLC, to Brent J. Fields, Secretary, Commission, dated May 23, 2018 (''**Nuveen Letter**'').
25. Letter from Thomas K. Lee, Executive Director & CIO, et al., New York State Teachers' Retirement System, to Brent J. Fields, Secretary, Commission, dated May 23, 2018 (''**NYSTRS Letter**'').
26. Letter from Hubert De Jesus, Global Head of Market Structure and Electronic Trading, and Joanne Medero, U.S. Head of Global Public Policy, BlackRock, Inc., to Brent J. Fields, Secretary, Commission, dated May 23, 2018 (''**BlackRock Letter**'').
27. Letter from Frank L. Jobert, Jr., Executive Director, Louisiana Trustee Education Council, to Brent J. Fields, Secretary, Commission, dated May 23, 2018 (''**LATEC Letter**'').
28. Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**FIA Letter**'').
29. Letter from Theodore R. Lazo, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**SIFMA Letter**'').
30. Letter from Patrick J. Healy, Founder & CEO, Issuer Network, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**Issuer Network Letter I**'').
31. Letter from Linda M. Giordano, Co-Founder & CEO, and Jeffrey M. Alexander, Co-Founder & President, Babelfish Analytics, Inc., to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**Babelfish Letter**'').
32. Letter from Dennis M. Kelleher, President & CEO, et al., Better Markets, Inc., to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**Better Markets Letter**'').
33. Letter from Rich Steiner, Electronic Trading Strategist, RBC Capital Markets, to Brent Fields, Secretary, Commission, dated May 24, 2018 (''**RBC Letter I**'').
34. Letter from William H. Hebert, Managing Director, Financial Information Forum, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**FIF Letter**'').
35. Letter from Paul M. Russo, Managing Director, Goldman Sachs & Co. LLC, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**Goldman Sachs Letter**'').
36. Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (''**Healthy Markets Letter I**'').
37. Letter from Jason Clague, Executive Vice President, Operational Services, Charles Schwab & Co., Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Schwab Letter**'').
38. Letter from Joseph Brennan, Principal & Global Head of Equity Investment Group, Vanguard, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Vanguard Letter**'').
39. Letter from Marc R. Bryant, Deputy General Counsel, Fidelity Investments, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Fidelity Letter**'').
40. Letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Citadel Letter**'').
41. Letter from Kevin Cronin, Global Head of Trading, Invesco Ltd., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Invesco Letter**'').
42. Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**CFA Letter**'').
43. Letter from Heidi W. Hardin, General Counsel, MFS Investment Management, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**MFS Letter**'').
44. Letter from Timothy J. Coyne, Global Head of ETF Capital Markets, and Nathaniel N. Evarts, Head of Trading, Americas, State Street Global Advisors, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**State Street Letter**'').
45. Letter from Dennis Simmons, Executive Director, Committee on Investment of Employee Benefit Access, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**CIEBA Letter**'').
46. Letter from Lisa Mahon Lynch, Director, Trading & Counterparty Services, Wellington Management Company LLP, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Wellington Letter**'').
47. Letter from Kevin Duggan, Managing Director, Execution & Treasury, Capital Markets, Ontario Teachers' Pension Plan, et al., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Joint Pension Plan Letter**'').[1062]
48. Letter from Tim Gately, Managing Director, Head of Americas Equities, Citigroup Global Markets Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Citi Letter**'').
49. Letter from Michael Jacejko, Birch Bay Capital, LLC, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Birch Bay Letter**'').
50. Letter from Cynthia Lo Bessette, General Counsel & Executive Vice President, OFI Global Asset Management, Inc., et al., OppenheimerFunds, Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Oppenheimer Letter**'').
51. Letter from Ray Ross, Chief Technology Officer, Clearpool Group, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Clearpool Letter**'').
52. Letter from James J. Angel, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Commission, dated May 25, 2018 (''**Angel Letter I**'').
53. Letter from Chester Spatt, Former Chief Economist, Commission, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Spatt Letter**'').
54. Letter from Joseph Kinahan, Managing Director, Client Advocacy & Market Structure, TD Ameritrade, Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**TD Ameritrade Letter**'').
55. Letter from Edward S. Knight, Executive Vice President & Global Chief Legal & Policy Officer, Nasdaq, Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Nasdaq Letter I**'').
56. Letter from Edward T. Tilly, Chairman & Chief Executive Officer,

[1062] The Commission notes that it separately received a copy of a signatory page already attached to this letter from Karl Polen, Chief Investment Officer, Arizona State Retirement System, dated May 21, 2018. For purposes of this summary, the copy has not been counted as a separate letter or comment.

Cboe Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (''**Cboe Letter I**'').

57. Letter from Matt D. Lyons, Global Equity Trading Manager, and Peter D. Stutsman, U.S. Regional Equity Trading Manager, The Capital Group Companies, to Brent J. Fields, Secretary, Commission, dated May 30, 2018 (''**Capital Group Letter**'').
58. Letter from Mike Rask, Chairman of the Board, and James Toes, President & CEO, Security Traders Association, to Brent J. Fields, Secretary, Commission, dated May 31, 2018 (''**STA Letter**'').
59. Letter from Alan Harris, to Commission, dated May 31, 2018 (''**Harris Letter**'').
60. Letter from Elizabeth K. King, General Counsel & Corporate Secretary, NYSE Group, Inc., to Brent J. Fields, Secretary, Commission, dated May 31, 2018 (''**NYSE Letter I**'').
61. Letter from Kimberly Unger, CEO & Executive Director, The Security Traders Association of New York, Inc., to Brent J. Fields, Secretary, Commission, dated June 1, 2018 (''**STANY Letter**'').
62. Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Brent J. Fields, Secretary, Commission, dated May 30, 2018 (''**IEX Letter I**'').
63. Market Commentary by Victor Lin, Credit Suisse, dated June 4, 2018 (''**Credit Suisse Commentary**'').
64. Letter from Rajesh Sharma, Corporate Secretary, Apache Corporation, to Brent J. Fields, Secretary, Commission, dated June 7, 2018 (''**Apache Letter**'').
65. Letter from ''Danny Mulson'' to Commission, dated June 7, 2018 (''**Mulson Letter I**'').
66. Letter from J.W. Verret, Associate Professor of Law, George Mason University, Antonin Scalia Law School, to Brent J. Fields, Secretary, Commission, dated June 11, 2018 (''**Verret Letter I**'').
67. Letter from James D. Rollins III, Chairman & Chief Executive Officer, BancorpSouth Bank, to Brent J. Fields, Secretary, Commission, dated June 11, 2018 (''**BancorpSouth Letter**'').
68. Letter from Jonathan A. Clark, Chief Executive Officer, and James C. Dolan, Chief Compliance Officer, Luminex Trading & Analytics LLC, to Brent J. Fields, Secretary, Commission, dated June 12, 2018 (''**Luminex Letter**'').
69. Letter from Mehmet Kinak, Vice President—Global Head of Systematic Trading & Market Structure, and Jonathan Siegel, Vice President—Senior Legal Counsel (Legislative & Regulatory Affairs), T. Rowe Price, to Brent J. Fields, Secretary, Commission, dated June 12, 2018 (''**T. Rowe Price Letter**'').
70. Letter from Jon R. Moeller, Vice Chairman & Chief Financial Officer, The Procter & Gamble Company, to Brent J. Fields, Secretary, Commission, dated June 13, 2018 (''**P&G Letter**'').
71. Letter from William P. Neuberger, Managing Director, Global Co-Head of Morgan Stanley Electronic Trading, and Andrew F. Silverman, Managing Director, Global Co-Head of Morgan Stanley Electronic Trading, Morgan Stanley & Co. LLC, to Brent J. Fields, Secretary, Commission, dated June 14, 2018 (''**Morgan Stanley Letter**'').
72. Letter from Larry Harris, Fred V. Keenan Chair in Finance, USC Marshall School of Business, to Brent J. Fields, Secretary, Commission, dated June 15, 2018 (''**Larry Harris Letter**'').
73. Letter from Keith Neumeyer, President & CEO, First Majestic Silver Corp., to Brent J. Fields, Secretary, Commission, dated June 19, 2018 (''**First Majestic Letter**'').
74. Letter from ''Avarice Pleonexia'' to Commission, dated June 20, 2018 (''**Pleonexia Letter**'').
75. Letter from John M. Freeman, Executive Vice President, Chief Legal Officer & Corporate Secretary, McDermott, to Brent J. Fields, Secretary, Commission, dated June 21, 2018 (''**McDermott Letter**'').
76. Letter from Janet McGinness, Corporate Secretary, Mastercard, Inc., to Brent J. Fields, Secretary, Commission, dated June 21, 2018 (''**Mastercard Letter**'').
77. Letter from Mark Elliott, Chief Financial Officer, Level Brands, Inc., to Brent J. Fields, Secretary, Commission, dated June 21, 2018 (''**Level Brands Letter**'').
78. Letter from Geir Øivind Nygård, Chief Investment Officer Asset Strategies, and Simon Emrich, Head of Market Structure Strategies, Norges Bank Investment Management, to Brent J. Fields, Secretary, Commission, dated June 21, 2018 (''**Norges Letter**'').
79. Letter from Neal V. Fenwick, Executive Vice President & Chief Financial Officer, ACCO Brands, Inc., to Brent J. Fields, Secretary, Commission, dated June 21, 2018 (''**ACCO Letter**'').
80. Letter from Thomas R. Kubera, Chief Accounting Officer & Interim Chief Financial Officer, SIFCO Industries, Inc., to Brent J. Fields, Secretary, Commission, dated June 21, 2018 (''**SIFCO Letter**'').
81. Letter from J.A. to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**JA Letter I**'').
82. Letter from Timothy P. Olson, Senior Corporate Counsel & Corporate Secretary, NorthWestern Corporation, to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**NorthWestern Letter**'').
83. Letter from Eric D. Koster, General Counsel & Secretary, Ethan Allen Interiors, Inc., to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**Ethan Allen Letter**'').
84. Letter from Mark H. Collin, Senior Vice President, Chief Financial Officer & Treasurer, Unitil Corporation, to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**Unitil Corporation**'').
85. Letter from Michael R. Peterson, Vice President, Corporate Secretary, & Associate General Counsel, to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**Johnson Letter**'').
86. Letter from ''Anonymous Anonymous'' to Commission, dated June 22, 2018 (''**Anonymous Letter I**'').
87. Letter from Stephen C. Richter, Executive Vice President & CFO, Weingarten Realty, to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**Weingarten Letter**'').
88. Letter from Richard L. Travis, Jr., Chief Financial Officer, Ennis, Inc., to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**Ennis Letter**'').
89. Letter from Bryan H. Fairbanks, Chief Financial Officer, Trex Company, to Brent J. Fields, Secretary, Commission, dated June 22, 2018 (''**Trex Letter**'').
90. Letter from John J. Manning, Vice President, General Counsel & Secretary, Sensient Technologies Corporation, to Brent J. Fields, Secretary, Commission, dated June 25, 2018 (''**Sensient Letter**'').
91. Letter from John Christofilos, Senior Vice-President & Chief Trading Officer, AGF Investments Inc., to Brent J. Fields, Secretary, Commission, dated June 25, 2018 (''**AGF Letter**'').
92. Letter from Dean Shigemura, Vice Chairman & Chief Financial Officer, Bank of Hawaii Corporation, to Brent J. Fields, Secretary,

Commission, dated June 25, 2018 (''**Hawaii Letter**'').
93. Letter from Jerry Fowden, Chief Executive Officer, Cott Corporation, to Brent J. Fields, Secretary, Commission, dated June 26, 2018 (''**Cott Letter**'').
94. Letter from Adam F. Wergeles, EVP & General Counsel, Leaf Group Ltd., to Brent J. Fields, Secretary, Commission, dated June 26, 2018 (''**Leaf Letter**'').
95. Letter from Haim Bodek, Managing Principal, and Stanislav Dolgopolov, Chief Regulatory Officer, Decimus Capital Markets, LLC, to Brent J. Fields, Secretary, Commission, dated June 26, 2018 (''**Decimus Letter**'').
96. Letter from Michael Sherman, Senior Vice President & General Counsel, Genesis Healthcare, Inc., to Brent J. Fields, Secretary, Commission, dated June 26, 2018 (''**Genesis Letter**'').
97. Letter from ''Anonymous Anonymous'' to Commission, dated June 27, 2018 (''**Anonymous Letter II**'').
98. Letter from Michael J. Schewel, Vice-President, General Counsel & Secretary, Tredegar Corporation, to Brent J. Fields, Secretary, Commission, dated June 27, 2018 (''**Tredegar Letter**'').
99. Letter from Nicholas C. Taylor, Chairman & CEO, Mexco Energy Corporation, to Brent J. Fields, Secretary, Commission, dated June 27, 2018 (''**Mexco Letter**'').
100. Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Brent J. Fields, Secretary, Commission, dated June 27, 2018 (''**IEX Letter II**'').
101. Presentation from Security Traders Association to Commission, dated June 28, 2018 (''**STA Presentation**'').
102. Letter from Timothy W. Gorman, Executive Vice President & Chief Financial Officer, Energizer Holdings, Inc., to Brent J. Fields, Secretary, Commission, dated June 28, 2018 (''**Energizer Letter**'').
103. Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association, to Brent J. Fields, Secretary, Commission, dated June 28, 2018 (''**ASA Letter**'').
104. Letter from W. Stancil Starnes, Chairman, President & Chief Executive Officer, ProAssurance Corporation, to Brent J. Fields, Secretary, Commission, dated June 29, 2018 (''**ProAssurance Letter**'').
105. Letter from Isabel Janci, Vice President, Investor Relations, The Home Depot, to Brent J. Field[s], Secretary, Commission, dated June 29, 2018 (''**Home Depot Letter**'').
106. Letter from Eric P. Sills, CEO & President, Standard Motor Products, Inc., to Brent J. Fields, Secretary, Commission, dated July 2, 2018 (''**SMP Letter**'').
107. Letter from Christopher T. Weber, Executive Vice President & Chief Financial Officer, Halliburton, to Brent J. Fields, Secretary, Commission, dated July 2, 2018 (''**Halliburton Letter**'').
108. Letter from Jennifer D. Whalen, Senior Vice President & Chief Financial Officer, Era Group Inc., to Brent J. Fields, Secretary, Commission, dated July 2, 2018 (''**Era Letter**'').
109. Letter from David M. Weisberger, Head of Equities, ViableMkts, to Brent J. Fields, Secretary, Commission, dated July 2, 2018 (''**ViableMkts Letter**'').
110. Letter from John S. Fischer, General Counsel, Natural Grocers by Vitamin Cottage, Inc., to Brent J. Fields, Secretary, Commission, dated July 3, 2018 (''**Natural Grocers Letter**'').
111. Letter from Mark J. Airola, Senior Vice President, General Counsel, Chief Administrative Officer & Corporate Secretary, Newpark Resources, Inc., to Brent J. Fields, Secretary, Commission, dated July 3, 2018 (''**Newpark Letter**'').
112. Letter from Jenny H. Parker, Senior Vice President—Finance, Secretary & Treasurer, Haverty Furniture Companies, Inc., to Brent J. Fields, Secretary, Commission, dated July 3, 2018 (''**Haverty Letter**'').
113. Letter from Adam W. Miller, Chief Financial Officer & Treasurer, Knight-Swift Transportation Holdings Inc., to Brent J. Fields, Secretary, Commission, dated July 5, 2018 (''**Knight-Swift Letter**'').
114. Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated July 6, 2018 (''**Healthy Markets Letter II**'').
115. Letter from R. Dale Lynch, Executive Vice President—Chief Financial Officer, Federal Agricultural Mortgage Corporation, to Brent J. Fields, Secretary, Commission, dated July 9, 2018 (''**Farmer Mac Letter**'').
116. Letter from Elizabeth K. King, General Counsel & Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated July 10, 2018 (''**NYSE Letter II**'').
117. Letter from ''Danny Mulson'' to Commission, dated July 10, 2018 (''**Mulson Letter II**'').
118. Letter from Maria Trainor, Vice President, General Counsel & Secretary, Ampco-Pittsburgh Corporation, to Brent J. Fields, Secretary, Commission, dated July 11, 2018 (''**Ampco-Pittsburgh Letter**'').
119. Letter from Ted A. Dosch, Executive Vice President—Finance & Chief Financial Officer, Anixter International Inc., to Brent J. Fields, Secretary, Commission, dated July 13, 2018 (''**Anixter Letter**'').
120. Letter from John K. Lines, SVP/Secretary & General Counsel, National HealthCare Corporation, to Brent J. Fields, Secretary, Commission, dated July 16, 2018 (''**NHC Letter**'').
121. E-mail from Patrick Healy, Founder & CEO, Issuer Network, to David Shillman, Commission, dated July 17, 2018 (''**Issuer Network E-mail**'').
122. Letter from R. Scott Mahoney, Senior Vice President—General Counsel & Secretary, AVANGRID, Inc., to Brent J. Fields, Secretary, Commission, dated July 18, 2018 (''**Avangrid Letter**'').
123. Letter from J.A. to Brent J. Fields, Secretary, Commission, dated July 19, 2018 (''**JA Letter II**'').
124. Letter from Ruairidh Ross, Deputy General Counsel & Assistant Secretary, HP Inc., to Brent J. Fields, Secretary, Commission, dated July 31, 2018 (''**HP Letter**'').
125. Letter from Glenn E. Tynan, Vice President & Chief Financial Officer, Curtiss-Wright Corporation, to Brent J. Fields, Secretary, Commission, dated August 3, 2018 (''**Curtiss-Wright Letter**'').
126. Letter from James J. Angel, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Commission, dated August 3, 2018 (''**Angel Letter II.**'')
127. Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Brent J. Fields, Secretary, Commission, dated August 8, 2018 (''**IEX Letter III**'').
128. Letter from Fiona Reynolds, Chief Executive Officer, Principles for Responsible Investment, to Brent J. Fields, Secretary, Commission, dated August 15, 2018 (''**PRI Letter**'').
129. Letter from Walter K. Compton, Executive Vice President & General Counsel, Murphy Oil Corporation, to Brent J. Fields, Secretary,

Commission, dated August 15, 2018 (''**Murphy Letter**'').

130. Letter from Sal Arnuk & Joe Saluzzi, Partners, Co-Founders & Co-Heads of Equity Trading, Themis Trading LLC, to Brent J. Fields, Secretary, Commission, dated August 16, 2018 (''**Themis Trading Letter II**'').
131. Letter from Jeffrey S. Davis, Nasdaq, Inc., to Brent J. Fields, Secretary, Commission, dated August 31, 2018 (''**Nasdaq Letter II**'').
132. Recommendation of the Investor Advisory Committee, dated September 13, 2018 (''**IAC Recommendation**'').
133. Letter from Sanda E. O'Connor, Chief Regulatory Affairs Officer, JPMorgan Chase & Co., to Brent J. Fields, Secretary, Commission, dated September 14, 2018 (''**JPMorgan Letter**'').
134. Letter from Anonymous Anonymous to Commission, dated September 21, 2018 (''**Anonymous Letter III**'').
135. Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Brent J. Fields, Secretary, Commission, dated September 24, 2018 (''**IEX Letter IV**'').
136. Letter from Chris Concannon, President & Chief Operating Officer, Cboe Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 28, 2018 (''**Cboe Letter II**'').
137. Letter from Susan M. Olson, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated October 1, 2018 (''**ICI Letter II**'').
138. Letter from Katya Malinova, Mackenzie Investments Chair in Evidence-Based Investment Management, DeGroote School of Business, McMaster University, *et al.*, to Brent J. Fields, Secretary, Commission, dated October 1, 2018 (''**CSA Letter**'').
139. Letter from ''Richard P. Grasso,'' ''Grasso Plumbing LLC,'' to Brent J. Fields, Secretary, Commission, dated October 1, 2018 (''**Grasso Letter**'').
140. Letter from Ira S. Lederman, W.R. Berkley Corporation, to Brent J. Fields, Secretary, Commission, dated October 2, 2018 (''**Berkley Letter**'').
141. Letter from Stacey Cunningham, President, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated October 2, 2018 (''**NYSE Letter III**'').
142. Letter from Rich Steiner, Electronic Trading Strategist, RBC Capital Markets, to Brent Fields, Secretary, Commission, dated October 16, 2018 (''**RBC Letter II**'').
143. Letter from Elizabeth K. King, General Counsel & Corporate Secretary, NYSE Group, to Brent J. Fields, Secretary, Commission, dated November 9, 2018 (''**NYSE Letter IV**'').
144. Letter from Elizabeth K. King, General Counsel & Corporate Secretary, NYSE Group, Inc., to Brent J. Fields, Secretary, Commission, dated November 20, 2018 (''**NYSE Letter V**'').
145. Letter from J.A. to Brent J. Fields, Secretary, Commission, dated December 3, 2018 (''**JA Letter III**'').
146. Letter from J.W. Verret to Brent J. Fields, Secretary, Commission, dated December 4, 2018 (''**Verret Letter II**'').
147. Letter from Patrick J. Healy, Founder & CEO, Issuer Network, to Brent J. Fields, Secretary, Commission, dated December 14, 2018 (''**Issuer Network Letter II**'').
148. Letter from Jeffrey S. Davis, Vice President & Deputy General Counsel, Nasdaq, Inc., to Brent J. Fields, Secretary, Commission, dated December 17, 2018 (''**Nasdaq Letter III**'').

Note: The following Exhibit will not appear in the Code of Federal Regulations.

Exhibit 1: **Data definitions for the Exchange Transaction Fee Summary**

The table below represents the data model for the reporting requirements of an Exchange Transaction Fee Summary. This data model reflects the disclosures required by 17 CFR 242.610T(e) and the logical representation of those disclosures to a corresponding XML element. The Commission's XML schema is the formal electronic representation of this data model.

- Concept—the information content as described in 17 CFR 242.610T(e) items 1 through 13.
- Element—a name for the XML element.
- Type—the XML data type, either a list of possible values or a general type such as ''number''.
- Spot, Monthly—How the element appears in a record of that type.
  - R—Required. The XML file is not valid unless this element is present.
  - NA—Not applicable. The element may appear in the record but its value is not to be used.
  - O—Optional. The XML file is valid without that element; whether it appears for a particular SRO, record type, test group, etc., depends on the actual fee being described. XML validation by itself cannot determine this.
- When Absent—If the element is absent, its value is interpreted as if it had been present with the value shown.
- Definition—Text to be included in the XML definition file (''schema'').

Concept	Element	Type	Spot	Monthly	When absent	Definition
Exchange	exch	Non-empty Text	R	R		A required unique code to identify each exchange in the Transaction Fee Pilot.
Record Type.	rt	S or M	R	R		A required record type indicator. M, if the fee type reported is the monthly realized fee (average or median fee); S, if the fee type reported is a spot fee schedule (base or top tier fee).
Participant Type.	ptcpt	MM, Other or Blank	O	O	Blank	MM, if the fees are for market makers, or else Other. Required for spot records if the exchange charged market makers and others different base and top tier fees. Required for monthly fee records if the exchange charged different average or median fees or pays different average or median fees. Otherwise blank or absent.
Pilot Group.	grp	1, 2, or C	R	R		A required indicator that identifies the test or control group during the Pilot and post-Pilot Period. 1, 2—Test Groups 1, 2; C—Control group.

Concept	Element	Type	Spot	Monthly	When absent	Definition
Displayed	disp	D, N, or B	R	R		D—Displayed, N—Not displayed, B—Both. For spot fee type records, if the fees are the same between displayed and non-displayed liquidity, then the exchange may report both in a single "B" record. For monthly records, this should be segmented into the average and median fee per share for displayed liquidity, and the average and median fee for non-displayed liquidity unless there are no differences between the average and median fees for displayed and non-displayed liquidity, in which case the exchange can report the average and median fee in a single "B" record.
Top/Depth	topOrDepth	T, D, or B	R	R		T—Fees for top-of-book liquidity; D—Fees for depth-of-book liquidity; B—Both. For spot records, if the fees are the same between top-of-book and depth-of-book liquidity, then the exchange may report both fees in a single "B" record. For monthly records, if there are no differences between the fees for top-of-book and depth-of-book liquidity, then the exchange may include only the average and median fees in a single "B" record.
Start Date	start	YYYY-MM-DD	R	O		The start date element must be present for a spot fee record, and the end element cannot appear alone. The effective date for any fee changes. This should correspond to the effective date referenced in the Form 19b–4 fee filings submitted to the Commission. This is needed in a monthly record only if fees changed on a day other than the first of the month; otherwise blank or absent.
End Date	end	YYYY-MM-DD or Blank	O	O	Blank	The last date that a given fee is viable prior to any fee changes. This column will be blank unless a mid-month change to fees is made. This should correspond to the last date that a given fee is applicable prior to the effective date of the new fee reflected in Form 19b–4 fee filings submitted to the Commission to capture any revisions to transaction-based fees and rebates. This is needed in a monthly record only if fees changed on a day other than the first of the month.
Month and Year.	YearMonth	YYYY-MM	NA	R		The year and month of the monthly realized reported average and median per share fees.
Pre/Post ..	preOrPost	1, 2, or Blank	O	O	Blank	An indicator variable needed only if the exchange changed fees on a day other than the first day of the month. Blank-there were no fee changes other than on the first day of the month. 1—The average and median are the pre-change average and median for the part of the month prior to the change. 2—The average and median are the post-change average and median for the part of the month after the change.
Base Taker Fee.	baseTakeFee	Number	R	NA		The Base Taker Fee is the standard per share fee assessed or rebate offered before any applicable discounts, tiers, caps, or other incentives are applied. Fees have a positive sign; rebates have a negative sign.
Top Tier Taker Fee.	topTierTakeFee	Number	R	NA		The Top Tier Taker Fee is the per share fee assessed or rebate offered after all applicable discounts, tiers, caps, or other incentives are applied. Fees have a positive sign; rebates have a negative sign.
Average Taker Fee.	avgTakeFee	Number	NA	R		The monthly average realized Taker fee assessed or rebate offered per share by category (*i.e.*, test group, participant type, displayed vs. non-displayed, and top-of-book vs. depth-of-book). Fees have a positive sign; rebates have a negative sign.
Median Taker Fee.	medianTakeFee	Number	NA	R		The monthly median realized Taker fee assessed or rebate offered per share by category (*i.e.*, test group, participant type, displayed vs. non-displayed, and top-of-book vs. depth-of-book), across broker-dealers. Fees have a positive sign; rebates have a negative sign.
Base Maker Fee.	baseMakeFee	Number	R	NA		The Base Maker Fee is the standard per share fee assessed or rebate offered before any applicable discounts, tiers, caps, or other incentives are applied. Fees have a positive sign; rebates have a negative sign.
Top Tier Maker Fee.	topTierFee	Number	R	NA		The Top Tier Maker Fee is the per share fee assessed or rebate offered all applicable discounts, tiers, caps, or other incentives are applied per share. Fees have a positive sign; rebates have a negative sign.
Average Maker Fee.	avgMakeFee	Number	NA	R		The monthly average realized Maker fee assessed or rebate offered per share by category (*i.e.*, test group, participant type, displayed vs. non-displayed, and top-of-book vs. depth-of-book). Fees have a positive sign; rebates have a negative sign.

Concept	Element	Type	Spot	Monthly	When absent	Definition
Median Maker Fee.	medianMakeFee	Number	NA	R		The monthly median realized Maker fee assessed or rebate offered per share by category (*i.e.*, test group, participant type, displayed vs. non-displayed, or top-of-book vs. depth-of-book), across broker-dealers. Fees have a positive sign; rebates have a negative sign.

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Part III

Federal Housing Finance Board

Federal Housing Finance Agency

12 CFR Parts 930, 932, and 1277

Federal Home Loan Bank Capital Requirements; Final Rule

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 930 and 932

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1277

RIN 2590–AA70

Federal Home Loan Bank Capital Requirements

AGENCY: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing this final rule to adopt as its own portions of the regulations of the Federal Housing Finance Board (Finance Board) pertaining to the capital requirements for the Federal Home Loan Banks (Banks). The final rule carries over most of the existing Finance Board regulations without material change, but substantively revises the credit risk component of the risk-based capital requirement, as well as the limitations on extensions of unsecured credit. The principal revisions to those provisions remove requirements that the Banks calculate credit risk capital charges and unsecured credit limits based on ratings issued by a Nationally Recognized Statistical Rating Organization (NRSRO), and instead require that the Banks use their own internal rating methodology. The final rule also revises the percentages used in the tables to calculate the credit risk capital charges for advances and non-mortgage assets. FHFA retains the percentages used in the existing table to calculate the capital charges for mortgage-related assets, but revises the approach to identify the appropriate percentage within the table. FHFA also has revised the table numbers in the final rule to align with the **Federal Register**'s new formatting standards, which were revised after publication of the proposed rule.

DATES: This rule is effective on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Scott Smith, Associate Director, Division of Bank Regulation, *Scott.Smith@FHFA.gov,* 202–649–3193; Julie Paller, Principal Financial Analyst, Division of Bank Regulation, *Julie.Paller@FHFA.gov,* 202–649–3201; Neil R. Crowley, Deputy General Counsel, *Neil.Crowley@FHFA.gov,* 202–649–3055; or Vickie R. Olafson, Assistant General Counsel, *Vickie.Olafson@FHFA.gov,* 202–649–3025 (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Bank System

The eleven Banks are wholesale financial institutions organized under the Federal Home Loan Bank Act (Bank Act).[1] The Banks are cooperatives. Only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank.[2] Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions.[3]

B. Federal Home Loan Bank Capital and Capital Requirements

In 1999, the Gramm-Leach-Bliley Act (GLB Act)[4] amended the Bank Act to replace the subscription capital structure of the Bank System. It required the Banks to replace their existing capital stock with new classes of capital stock that would have different terms from the stock then held by Bank System members. Specifically, the GLB Act authorized the Banks to issue new Class A stock, which is redeemable on six months' notice, and Class B stock, which is redeemable on five years' notice. The GLB Act allowed Banks to issue Class A and Class B stock in any combination and to establish terms and preferences for each class or subclass of stock issued, consistent with the Bank Act and regulations adopted by the Finance Board.[5] The classes of stock to be issued, as well as the terms, rights, and preferences associated with each class of Bank stock are governed by a capital structure plan, which is established by each Bank's board of directors and approved by FHFA.

The GLB Act also amended the Bank Act to impose on the Banks new total, leverage, and risk-based capital requirements similar to those applicable to depository institutions and other housing government sponsored enterprises (GSEs), and directed the Finance Board to adopt regulations prescribing uniform capital standards for the Banks.[6] The Finance Board carried out that statutory directive in 2001 when it published a final capital rule, and later adopted amendments to that rule.[7] In addition to addressing minimum capital requirements, the rules established minimum liquidity requirements for each Bank and set limits on a Bank's unsecured credit exposure to individual counterparties and groups of affiliated counterparties.[8] These Finance Board regulations remain in effect and have not been substantively amended since 2001.

The GLB Act amendments to the Bank Act also defined the types of capital that the Banks must hold—specifically permanent and total capital. Permanent capital consists of amounts paid by members for Class B stock plus the Bank's retained earnings, as determined in accordance with generally accepted accounting principles (GAAP).[9] Total capital is made up of permanent capital plus the amounts paid by members for Class A stock, any general allowances for losses held by a Bank under GAAP (but not allowances or reserves held against specific assets or specific classes of assets), and any other amounts from sources available to absorb losses that are determined by regulation to be appropriate to include in total capital.[10] As a matter of practice, however, each Bank's total capital consists of its permanent capital plus the amounts, if any, paid by its members for Class A stock.

The Bank Act requires each Bank to hold total capital equal to at least 4 percent of its total assets. The statute separately requires each Bank to meet a leverage requirement of total capital to total assets equal to 5 percent, but

[1] *See* 12 U.S.C. 1423, 1432(a).

[2] *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

[3] *See* 12 U.S.C. 1427.

[4] Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[5] *See* 12 U.S.C. 1426; 12 CFR part 1277.

[6] *See* 12 U.S.C. 1426(a). In 2008, the Housing and Economic Recovery Act of 2008 (HERA) amended the risk-based capital provisions in the Bank Act to allow FHFA greater flexibility in establishing these requirements. Public Law 110–289, 122 Stat. 2654, 2676 (July 30, 2008) (amending 12 U.S.C. 1426(a)(3)(A)).

[7] *See* Capital Requirements for Federal Home Loan Banks, 66 FR 8262 (Jan. 30, 2001) (''Final Finance Board Capital Rule''); and Amendments to Capital Requirements for Federal Home Loan Banks, 66 FR 54097 (Oct. 26, 2001). The Finance Board regulations are found at 12 CFR part 932.

[8] *See* Final Finance Board Capital Rule, 66 FR 8262; Amendments to Capital Requirements for Federal Home Loan Banks, 66 FR 54097. *See also* Final Rule: Unsecured Credit Limits for Federal Home Loan Banks, 66 FR 66718 (Dec. 27, 2001) (amending 12 CFR 932.9).

[9] *See* 12 U.S.C. 1426(a)(5).

[10] *Id.* Neither the Finance Board nor FHFA has approved including within a Bank's total capital any other amounts that are available to absorb losses, and no Bank has any such general allowances for losses as part of its capital.

provides that in determining compliance with this leverage requirement, a Bank must calculate its total capital by multiplying the amount of its permanent capital by 1.5 and adding to this product any other component of total capital.[11]

The GLB Act also required each Bank to meet a risk-based capital requirement by maintaining permanent capital in an amount at least equal to the sum of its credit risk and market risk, and the Finance Board further required each Bank to maintain permanent capital to support its operations risk.[12] Under the Finance Board's implementing regulations, a Bank must calculate a credit risk capital charge for each of its assets, off-balance sheet items, and derivative contracts to determine its risk-based capital requirement. The basic charge is based on the book value of an asset, or other amount calculated under the rule, multiplied by a credit risk percentage requirement (CRPR) for that particular asset or item, which is derived from one of the tables set forth in the rule. Generally, the CRPR varies based on the rating assigned to the asset by an NRSRO and the maturity of the asset.[13] The market risk capital charge is calculated separately, as the maximum loss in the Bank's portfolio under various stress scenarios, estimated by an approved internal model, such that the probability of a loss greater than that estimated by the model is not more than one percent.[14] The operational risk capital charge equals 30 percent of the combined credit and market risk charges for the Bank, although the regulations allow a Bank to demonstrate that a lower charge should apply, provided that FHFA approves its alternative approach and other conditions are met.[15]

C. The Dodd-Frank Act and Bank Capital Rules

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires federal agencies to: (i) Review regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument; and (ii) to the extent those regulations contain any references to, or requirements based on, NRSRO credit ratings, remove such references or requirements.[16] In place of such NRSRO rating-based requirements, agencies are instructed to substitute appropriate standards for determining creditworthiness. The Dodd-Frank Act further provides that, to the extent feasible, an agency should adopt a uniform standard of creditworthiness for use in its regulations, taking into account the entities regulated by it and the purposes for which such regulated entities would rely on the creditworthiness standard.

Several provisions of the Finance Board capital regulations include requirements that are based on NRSRO credit ratings, and thus must be revised to comply with the Dodd-Frank Act provisions related to use of NRSRO ratings.[17] Specifically, as already noted, the credit risk capital charges for certain Bank assets are calculated in large part based on the credit ratings assigned by NRSROs to a particular counterparty or specific financial instrument. In addition, the rule related to the operational risk capital charge allows a Bank to calculate an alternative capital charge if the Bank obtains insurance to cover operational risk from an insurer with an NRSRO credit rating of no lower than the second highest investment grade rating. Finally, the capital rules addressed by this rulemaking also establish unsecured credit limits for the Banks based on NRSRO credit ratings of their counterparties. The final rule brings each of these provisions into compliance with the Dodd-Frank Act by removing the references to NRSRO credit ratings and replacing them with the provisions described below.

D. The Proposed Rule

Neither the Finance Board nor FHFA has amended the capital regulations since their adoption in 2001. FHFA issued the proposed rule principally to remove the references to NRSRO credit ratings, relocate the Finance Board's capital regulations to the FHFA chapter of the regulations, and make certain other amendments to the risk-based capital provisions of the regulations.[18] FHFA proposed to adopt most of the provisions of the Finance Board regulations as its own without substantive change. Thus, the proposed rule would have carried over the Finance Board regulations addressing a Bank's total capital requirement and risk-based capital requirement without change, and would have made only modest revisions to the Finance Board regulations addressing market risk, operational risk, and reporting requirements.[19] FHFA proposed to rescind as moot § 932.1 of the Finance Board regulations, which required agency approval of the Banks' initial market risk models, and to rescind § 932.8, which established a contingency liquidity requirement for the Banks, because FHFA intended to address liquidity requirements as part of a separate rulemaking.[20] The proposed rule would have made significant substantive revisions to only two provisions of the Finance Board regulations: § 932.4, regarding the determination of a Bank's credit risk capital requirement; and § 932.9, regarding limits on unsecured credit exposures. In both cases, the proposed rule would have replaced requirements based on NRSRO credit ratings with requirements based on a Bank's own internal credit rating methodologies, and also would have added new provisions in response to developments in the marketplace relating to derivative contracts, specifically, the Dodd-Frank Act mandate for clearing certain derivative transactions. With respect to the credit risk capital charges, the proposed rule also would have revised the CRPRs used in the current regulation's tables to calculate the credit risk capital charges for advances and for non-mortgage assets, off-balance sheet items, and derivative contracts. With respect to the unsecured credit limits,

[11] *See* 12 U.S.C. 1426(a)(2). *See also* 12 CFR 932.2.

[12] *See* 12 U.S.C. 1426(a)(3)(A); 12 CFR 932.3 (Finance Board implementing regulation). In 2008, HERA amended this provision to require that FHFA establish risk-based capital regulations that ensure that each Bank operates in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise from its operations and management.

[13] *See* 12 CFR 932.4. The capital charges for advances and certain other ''unrated assets'' are not based on actual or imputed NRSRO credit ratings.

[14] *See* 12 CFR 932.5.

[15] *See* 12 CFR 932.6.

[16] *See* section 939A, Public Law 111–203, 124 Stat. 1887 (July 21, 2010) (15 U.S.C. 78o–7 note).

[17] *See* Advance Notice of Proposed Rulemaking: Alternatives to Use of Credit Ratings in Regulations Governing the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, 76 FR 5292, 5294 (Jan. 31, 2011).

[18] *See* Proposed Federal Home Loan Bank Capital Requirements, 82 FR 30776 (July 3, 2017). FHFA previously repealed the Finance Board regulations governing the classes of capital stock that the Banks may issue and the requirements for their capital structure plans, and incorporated the substance of those provisions, with certain amendments, into its own regulations, at 12 CFR part 1277, subparts C and D. *See* Final Rule on Federal Home Loan Bank Capital Stock and Capital Plans, 80 FR 12753 (Mar. 11, 2015).

[19] *See* 12 CFR 932.2 (total capital), 932.3 (risk-based capital), 932.5 (market risk), 932.6 (operational risk), 932.7 (reporting requirements).

[20] Since the date of the proposed rule, FHFA has issued an advisory bulletin addressing Bank liquidity management, AB 2018–07 (Aug. 27, 2018), and does not currently intend to pursue a separate rulemaking on that topic. The advisory bulletin is available at: *https://www.fhfa.gov/Supervision Regulation/AdvisoryBulletins/Pages/Federal-Home-Loan-Bank-Liquidity-Guidance.aspx.* The advisory bulletin also rescinds prior supervisory guidance that FHFA had issued in March 2009 on the topic of liquidity management. As proposed, the final rule rescinds the contingency liquidity provision currently located at 12 CFR 932.8 of the Finance Board regulations.

the proposed rule also would have codified the substance of certain FHFA regulatory interpretations that have addressed the application of the unsecured credit limits in particular situations. The proposed rule would not have changed the basic percentage limits used to calculate the amount of unsecured credit a Bank can extend to a single counterparty or group of affiliated counterparties.

E. Overview of Comments on the Proposed Rule

The proposed rule provided a comment period of 60 days, which closed on September 1, 2017. FHFA received only one comment letter on the proposed rule, which was a joint letter from the eleven Banks. The paragraphs immediately below provide brief descriptions of the principal issues addressed by the Banks' comment letter. Those issues are discussed in greater detail within the relevant provisions of the section-by-section discussion of the final rule, set out at Section II, below. Office of the Federal Register standards now require tables be numbered consecutively within the section. Accordingly, FHFA has also revised the tables to § 1277.4 that were labelled 1.1, 1.2, 1.3, 1.4, and 2 in the proposed rule to Tables 1, 2, 3, 4, and 5, respectively, in the final rule, and will be referenced as such in the preamble.

Capital charges. The Banks contended that the proposed rule would have set capital charges for certain categories of assets higher than they should be, given the historical performance of those asset types. With respect to advances, the Banks questioned the proposed increases in capital charges, which would have increased modestly for all maturities over those in the current rule. The Banks asserted that FHFA should instead reduce the capital charges for advances in light of their historical performance and the Banks' priority security interest in collateral pledged to secure the advances. With respect to derivative contracts between a Bank and its members, the Banks asked that FHFA retain the current capital provision for those contracts, under which the capital charge is the same as that for an advance with the same maturity. The proposed rule would have treated derivative contracts with Bank members in the same manner as derivative contracts with other counterparties, which carry higher capital charges. The Banks reasoned that retaining the current capital treatment for derivative contracts with their members was appropriate, given that all such derivative contracts are fully secured in the same manner as their advances, and that the Banks are exposed to less credit risk on such transactions than is the case with derivative contracts with dealer counterparties. The proposed rule had included a zero percent capital charge for obligations issued by the Enterprises while those obligations are backed by the direct financial support of the United States Treasury Department. The Banks asked that FHFA extend that provision to all other GSEs, regardless of whether they received such federal support.

The Banks also questioned the proposed CRPRs for collateralized mortgage obligations (CMOs), most of which would be higher than the CRPRs for mortgage-backed securities structured as pass-through instruments. The Banks contended that the current market value and historical performance of the senior tranches of CMOs support a capital requirement similar to that imposed on pass-through securities. The Banks requested, therefore, that the final rule treat all categories of CMOs the same as the corresponding categories of pass-through securities, unless a particular CMO exhibits the characteristics of a subordinated tranche and the performance of an unsecured investment. In a similar fashion, the Banks disagreed with the proposed rule's treatment of multifamily mortgage backed securities (MBS) and commercial mortgage backed securities (CMBS), notwithstanding that the proposed rule would not have changed the capital charges for those instruments from the charges imposed by the current regulations. The Banks contended that multifamily MBS perform more like single family residential mortgage securities and should, therefore, be subject to similar capital charges. As an alternative, the Banks suggested that FHFA create separate CRPR tables for both multifamily MBS and for CMBS, noting that both of these security types have performed better than unsecured or subordinated debt instruments.

The Banks also requested that FHFA revise the operational risk capital requirement, which requires each Bank to maintain permanent capital equal to 30 percent of the sum of its credit and market risk requirements, and which can be reduced to no less than 10 percent of that amount if FHFA approves a Bank's alternative methodology for quantifying operational risk. The Banks asked that FHFA remove the 10 percent lower bound for approved alternative methodologies, reasoning that a fixed minimum is not necessary if FHFA has approved a Bank-developed methodology. The Banks further asked that FHFA provide analytical support for the 30 percent and 10 percent thresholds, which FHFA had proposed to carry over from the Finance Board regulations without change.

Unsecured extensions of credit. The Banks raised three issues relating to the proposed limits for unsecured extensions of credit. The first issue relates to FHFA's proposal to eliminate the special treatment currently afforded to extensions of unsecured credit to GSEs. The current rule allows a Bank to extend unsecured credit to a GSE in an amount equal to 100 percent of the lesser of the total capital of the Bank or the GSE counterparty. The proposed rule would have reduced the general limit for all GSEs (other than those operating with explicit financial support of the United States) by treating them in the same manner as any other counterparty, meaning that the maximum limit for extensions of unsecured credit to a GSE could not exceed 15 percent of the lesser of the total capital of the Bank or the GSE, or 30 percent when including overnight exposures. The Banks asked that FHFA retain a special unsecured limit for all GSEs, and not just for those operating with direct government support. The second issue sought clarification of an exception within § 1277.7(g)(2) of the proposed rule, which would have excluded cleared derivative transactions from being subject to the unsecured credit limits, by extending it to include as well any posted collateral associated with the cleared derivative transactions. The third issue pertained to the reporting period for total secured and unsecured extensions of credit, which the Banks asked be changed from monthly to quarterly to be consistent with the change in the reporting periods that FHFA proposed for both the market and credit risk-based capital requirements.

Derivatives and collateral. A number of the Banks' comments focused on the proposed capital treatment of cleared derivatives, as well as of the collateral relating to a derivative contract that is either held or posted by the Banks. These comments requested that FHFA clarify that, for purposes of determining the current credit exposure on a cleared derivative contract under § 1277.4(i)(1)(i) of the final rule, the mark-to-market value of the contract be characterized as a *de minimis* amount. The Banks also requested that FHFA modify § 1277.4(i)(2) of the proposed rule, which specified alternative means for determining the potential future credit exposure on a derivative contract, to allow the use of the initial margin models used by Derivatives Clearing Organizations (DCOs). The Banks also

asked that FHFA not assess any capital charge against the amount of the collateral posted by a Bank to a DCO that exceeds the Bank's current credit exposure to the DCO, reasoning that the credit risk capital charge should include only the potential future credit exposure, and not also the initial margin required and held by the DCO as collateral. The Banks also asked that the final rule clarify that the collateral posted by a Bank should be valued without reduction for any discounts or haircuts imposed by agreement or regulation, and that FHFA retain the proposed provision that would require that collateral held by a Bank be valued after such discounts. The Banks further requested that the final rule provide that the capital charge on collateral pledged by a Bank only reflect the incremental CRPR attributable to the risk of the collateral custodian because the pledged collateral would already be subject to its own capital charge by virtue of being an asset on the Bank's balance sheet. The Banks raised one other issue relating to the credit risk capital requirement for uncleared derivative contracts, asking that the final rule exclude any capital charge applicable to collateral held by the Bank that is used to reduce the current, and possibly also the potential future, exposures.

Other Comments. Most of the other comments addressed lesser issues or were more technical in nature. With respect to the capital treatment for private label MBS, the Banks requested that FHFA clarify that their internal credit ratings for such assets should be based on potential future losses to the amortized cost of the asset. The Banks also requested that FHFA modify the proposed language to require that a Bank address any deficiencies in its methodology identified by FHFA, rather than allowing FHFA, on a case-by-case basis, to direct a Bank to change the calculated credit risk charge on particular assets. Another Bank comment suggested that FHFA be consistent in its treatment of guarantors under both the capital and unsecured credit provisions, some of which mandate that a Bank use the creditworthiness of the guarantor in applying a regulation and others of which are permissive and allow a Bank to use creditworthiness of the counterparty or the guarantor in applying other regulations. Specifically, the Banks asked that FHFA amend the unsecured credit limits to allow the Banks to choose either the counterparty or its third-party guarantor when determining its maximum unsecured credit exposure to the counterparty. The Banks also requested that FHFA clarify that the term ''remaining maturity'' contained in Table 2 means the ''weighted average life of the asset.'' The Banks also asked that FHFA shorten the historical observation period that the Banks must use when running their internal market risk models. Section 1277.5(b)(4)(ii) of the proposed regulation carried over the substance of the Finance Board regulation, which requires that the observation period begin in 1978, and the Banks asked that FHFA allow them to commence the period in 1992, to be consistent with other FHFA guidance.

II. Section-by-Section Analysis of the Final Rule

A. Definitions—§ 1277.1

The proposed rule included definitions for seven new terms, which are: ''collateralized mortgage obligation,'' ''derivatives clearing organization,'' ''eligible master netting agreement,'' ''non-mortgage asset,'' ''non-rated asset,'' ''residential mortgage,'' and ''residential mortgage security.'' FHFA received no comments on these definitions and is adopting them as proposed. The Banks' comment letter asked that the final rule also define the terms ''internal market-risk model'' and ''internal cash-flow model.'' Both terms are used, but not defined, in 12 CFR 932.5 of the Finance Board regulations (the market risk capital requirement) and were carried forward into the corresponding provisions of the proposed rule. FHFA agrees that defining these terms would add clarity to the regulation by describing the time dimension of the analysis that is to be done with each of the two model approaches under the market risk provisions of the regulation. FHFA has defined ''internal market-risk model'' as a model that is used to assess the effect on portfolio value from an instantaneous shock to interest rates, volatilities, and option adjusted spreads, and has defined ''internal cash-flow model'' as a model that is used to assess the evolution in portfolio value and cash-flows over a time-path of such shocks that could extend out for a period of years.

In response to another comment questioning the need for the Banks to hold capital against any excess collateral that a Bank has posted to a DCO, FHFA has added the term ''bankruptcy remote'' to § 1277.4(e)(5)(ii)(C) and also has defined that term. As defined, ''bankruptcy remote'' describes collateral that a Bank has pledged to a DCO counterparty but that would not be included in that counterparty's estate under any insolvency or similar proceedings. If any excess collateral pledged to a DCO is held in a manner that is bankruptcy remote a Bank need not hold capital against that amount. If the excess collateral pledged to a DCO is held in a manner that is not bankruptcy remote, the Bank would have to hold capital against it, as provided by § 1277.4(e)(5)(ii)(C). The final rule also includes a new definition of ''residential mortgage asset,'' which includes individual one-to-four family residential mortgage loans, pools of such loans, and residential mortgage pass-through securities. FHFA has added that definition to distinguish between the types of mortgage-related assets for which CRPRs are derived from categories in the top half of Table 4 and CMOs, for which CRPRs are derived from the categories in the lower half of Table 4.

B. Total Capital and Risk-Based Capital Requirements—§§ 1277.2 and 1277.3

FHFA is adopting proposed §§ 1277.2 and 1277.3, each of which is identical in substance to the corresponding provision in the Finance Board regulations, as final without change. Section 1277.2 sets forth the minimum total capital and leverage ratios that each Bank must maintain under section 6(a)(2) of the Bank Act.[21] Section 1277.3 sets forth a Bank's risk-based capital requirement and requires each Bank to hold at all times an amount of permanent capital that is equal to or greater than the sum of its credit risk, market risk, and operational risk capital requirements.[22] In turn, §§ 1277.4, 1277.5, and 1277.6 establish, respectively, the requirements for calculating a Bank's credit risk, market risk, and operational risk capital charges, as described below.

C. Credit Risk Capital Requirements—§ 1277.4

1. Overview of Proposed § 1277.4

The principal revisions to the current credit risk capital requirements included in proposed § 1277.4 would have changed how a Bank determines the CRPRs used to calculate capital charges for its non-mortgage assets,

[21] 12 U.S.C. 1426(a)(2).

[22] FHFA believes that this approach remains consistent with the amendments made by HERA to the risk-based capital requirements in the Bank Act. As amended, the Bank Act provides the Director with broad authority to establish by regulation risk-based capital standards for the Banks that ensure the Banks operate in a safe and sound manner with sufficient permanent capital and reserves to support the risks arising from their operations. *See* 12 U.S.C. 1426(a)(3)(A).

derivative contracts, and off-balance sheet items (Table 2 in the final rule), and for its residential mortgage assets (Table 4 in the final rule). In both cases, the proposed rule would have required a Bank to determine the capital charge based on a credit rating that the Bank calculates internally, rather than on an NRSRO credit rating, as had been the case under the Finance Board regulations. In addition, the proposed rule would have updated the individual CRPRs in Tables 1 and 2, which are used to calculate the applicable capital charges for advances and non-mortgage assets, respectively. The proposed rule also would have changed the frequency of a Bank's calculation of its credit risk capital charges from monthly to quarterly.[23] FHFA received no comments on the structure of proposed § 1277.4, which addresses all aspects of the credit risk capital requirement, and is adopting that structure without change. As discussed below, FHFA received a number of comments suggesting modifications to certain aspects of proposed § 1277.4.

2. Credit Risk Capital Requirements: General Requirement—§ 1277.4(a); Credit Risk Capital Charge for Residential Mortgage Assets and Collateralized Mortgage Obligations—§ 1277.4(b); Credit Risk Capital Charge for Advances, Non-Mortgage Assets, and Non-Rated Assets—§ 1277.4(c)

FHFA received no comments on paragraphs (a) through (c) of proposed § 1277.4 and is adopting them as final without change. The general requirement under § 1277.4(a) provides that a Bank's credit risk capital requirement shall equal the sum of the individual credit risk capital charges for its advances, residential mortgage assets, non-mortgage assets, off-balance sheet items, derivative contracts, and non-rated assets. Section 1277.4(b) directs the Banks to determine capital charges for residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations in accordance with § 1277.4(g). Section 1277.4(c) directs the Banks to determine capital charges for advances, non-mortgage assets, and non-rated assets pursuant to § 1277.4(f), and to use the amortized cost of the asset in doing so, *i.e.,* a Bank determines the capital charges for those assets by multiplying the amortized cost of the asset by the CRPR assigned to the asset under the appropriate table. Section 1277.4(c) also includes an exception for any asset that a Bank carries at fair value and for which the Bank recognizes changes in that asset's fair value in income. For these assets, the Bank would multiply the fair value of the asset by the applicable CRPR to determine its capital charge. As explained in the proposed rule, FHFA is requiring Banks to use the amortized cost or fair value (rather than the book value as required in the current Finance Board regulation) because those are the current financial instrument recognition and measurement attributes used in relevant accounting guidance.[24]

3. Credit Risk Capital Charge for Off-Balance Sheet Items—§ 1277.4(d)

Section 1277.4(d) addresses capital charges for off-balance sheet items and is identical in substance to the current Finance Board regulation. FHFA received no comments on paragraph (d) of proposed § 1277.4 and is adopting it as final without change. Under this provision, the capital charge for such items will continue to be equal to the credit equivalent amount of the item multiplied by the appropriate CRPR assigned to the item by Table 2 of § 1277.4, except for standby letters of credit, for which the CRPR will be the same as the CRPR established under Table 1 for an advance with the same maturity. Section 1277.4(d) further directs the Banks to determine the credit equivalent amount for all off-balance sheet items in accordance with § 1277.4(h), which also is identical in substance to the corresponding Finance Board regulation. Thus, a Bank may continue to calculate the credit equivalent amount for an off-balance sheet item by using either an FHFA-approved model or the credit conversion factors set forth in Table 5 to § 1277.4. Section 1277.4(h) also carries over the provision of the current regulation that allows the Banks to use a credit conversion factor of zero for any off-balance sheet commitments that are unconditionally cancelable or effectively provide for cancellation upon deterioration in the borrowers' creditworthiness.

4. Credit Risk Capital Requirements for Derivative Contracts—§ 1277.4(e)

Section 1277.4(e) of the final rule establishes the general requirements for calculating credit risk capital charges for derivative contracts. The proposed rule included a number of changes to the current Finance Board regulation's capital treatment of derivatives. These changes reflect developments in derivatives regulations brought about by the Dodd-Frank Act, including the clearing requirement for many standardized over-the-counter (OTC) derivative contracts and the adoption by FHFA, jointly with other federal regulators, of the Final Rule on Margin and Capital Requirements for covered Swap Entities, which established margin and capital requirements for uncleared swap contracts.[25] FHFA received comments relating to several provisions of § 1277.4(e) in the proposed rule relating to derivative contracts and has revised the final rule in certain respects to address those comments, as described below. Overall, however, the derivatives provisions of the final rule are in most respects substantively the same as the proposed rule. Section 1277.4(e)(1), (2), and (3), which address the method of calculating the capital charge, the use of collateral to reduce the capital charge, and the requirements for using such collateral, respectively, are in substance the same as the corresponding provisions of the proposed rule. FHFA revised the language of paragraph (e)(1)(i), relating to the calculation of the current credit exposure, to state more directly that the Banks should use the column within Table 2 for items with maturities of one year or less when determining the CRPR for a derivative contract; the proposed rule had been phrased in terms of deeming the contract to have a maturity of one year or less. FHFA also revised paragraph (e)(1)(iii) to refer to the ''undiscounted amount'' of excess collateral posted by a Bank on a contract, in response to a comment from the Banks. FHFA has revised the language of paragraph (e)(2) of the final rule with the intent of describing with more clarity the manner in which the Banks may use collateral provided by their counterparties to reduce the capital charge on a derivative contract. Section 1277.4(e)(3), which describes conditions that must be satisfied in order for such collateral to be eligible to reduce the capital charge, is unchanged from the proposed rule. FHFA has added a new paragraph (e)(4) to § 1277.4 of the final rule in response to comments received from the Banks. This provision now deals with derivative contracts between a Bank and its members and effectively reinstates a provision that is in the current Finance

[23] Section 1277.5(e) of the proposed rule also would have required the Banks to calculate their market risk capital charge quarterly, rather than monthly, and the final rule adopts that provision.

[24] The final rule includes a similar provision, at 12 CFR 1277.4(g)(1), which pertains to the calculation of capital charges related to residential mortgage assets and collateralized mortgage obligations.

[25] *See* Final Rule on Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015), as amended, 83 FR 50805 (Oct. 10, 2018).

Board regulations. Paragraph (e)(5) of the final rule, which sets the capital charges for certain foreign exchange rate contracts and for cleared derivatives contracts, is the same as paragraph (e)(4) of the proposed rule, with one revision. Under that revision, a Bank would have to hold capital against any excess collateral that it has posted to a DCO only if the DCO holds the collateral in a manner that is ''not bankruptcy remote.'' The final rule also added a definition of ''bankruptcy remote,'' as described previously. The discussion below provides a more detailed description of the various provisions of the final rule addressing derivative contracts.

i. General Credit Risk Capital Charge Calculations for Derivative Contracts

Uncleared Derivative Contracts

Section 1277.4(e)(1) of the final rule establishes credit risk capital charges for uncleared derivative contracts to which a Bank is party.[26] The initial credit risk capital charge for an uncleared derivative contract equals the sum of: (i) The current credit exposure on the contract multiplied by the appropriate CRPR; (ii) the potential future credit exposure multiplied by the appropriate CRPR; and (iii) the undiscounted amount of any collateral posted by the Bank with respect to the contract that exceeds its payment obligation, multiplied by the CRPR assigned to the entity holding the collateral. A Bank must calculate its current and potential future credit exposures on a derivative contract in accordance with § 1277.4(i)(1)(ii) and (i)(2), respectively. A Bank may reduce that capital charge if it holds certain collateral against its counterparty's payment obligations, as provided in § 1277.4(e)(2), which is described below.[27]

Cleared Derivative Contracts and Foreign Exchange Rate Contracts

Section 1277.4(e)(5)(ii) of the final rule includes a separate provision for determining the credit risk capital charge for a cleared derivative contract. While the credit risk capital charge for an uncleared derivative contract is based on the applicable CRPR and deemed maturity from Table 2 under § 1277.4, the credit risk capital charge for all cleared derivative contracts is set at a fixed percentage of the sum of the three elements listed in § 1277.4(e)(5)(ii)(A) through (C) of the final rule. Section 1277.4(e)(5)(ii) provides that the credit risk capital charge for a cleared derivative contract will be equal to 0.16 percent times the sum of a Bank's current credit exposure on the contract,[28] plus its potential future credit exposure on the contract, plus the amount of any excess collateral posted by the Bank and held by the clearing organization in a manner that is not ''bankruptcy remote.''[29] Section 1277.4(e)(5)(ii)(A) and (B) further provide that a Bank must calculate its current and potential future credit exposures on a cleared derivative in accordance with § 1277.4(i)(1)(i) and (i)(2), respectively. FHFA has made one clarifying revision to § 1277.4(e)(5)(ii)(A) by replacing a cross-reference to ''paragraph (i)(1)'' with a reference to ''paragraph (i)(1)(i).'' The original text had included provisions related to single derivative contracts—which could include both cleared and uncleared transactions—as well as to multiple contracts with one counterparty that were subject to an eligible master netting agreement—which category would include only uncleared derivative contracts. The revision makes clear that the provisions of § 1277.4(i)(1)(ii) regarding contracts subject to netting agreements do not apply when determining the current credit exposure for a cleared derivative contract. Section 1277.4(e)(5)(i) also includes a separate provision that carries over from the Finance Board regulations an exception for certain foreign exchange rate contracts. That provision establishes a zero percent capital charge for foreign exchange rate contracts (excluding gold contracts), that have an original maturity of 14 calendar days or less, and explicitly excludes gold contracts from this provision.

Derivative Contracts With a Member

As noted previously, § 1277.4(e)(4) of the final rule reinstates a provision from the Finance Board regulations that establishes a different means of determining the credit risk capital charge for a derivative contract between a Bank and one of its members. Under this provision, a Bank will calculate the capital charge for such transactions in accordance with § 1277.4(e)(1), which applies to uncleared derivative contracts, but will obtain the CRPRs from Table 1 of the final rule (which applies to advances), rather than from Table 2, which otherwise would apply and which has somewhat higher CRPRs.

ii. Collateral Valuation for Derivative Contracts

Collateral Valuation—Uncleared Derivative Contracts

FHFA proposed the requirement relating to a Bank's excess pledged collateral under § 1277.4(e)(1)(iii) in order to address a credit risk exposure that is not addressed by the current Finance Board regulations. Specifically, this provision of the final rule takes into account the credit exposure that arises from the amount of collateral that a Bank posts in excess of the Bank's current, marked-to-market obligation to its counterparty under a particular derivative contract.[30] In most instances, the value of the Bank's posted collateral will exceed the Bank's current obligation under the derivative contract. That amount of excess collateral constitutes a credit exposure for the Bank because of the possibility that the party holding the collateral may fail and the Bank may not be able to recover its excess collateral. Under § 1277.4(e)(1)(iii), a Bank will calculate the specific charge for the posted excess collateral based on a CRPR obtained from Table 2, using the Bank's internal rating for the counterparty or custodian

[26] The current Finance Board regulations do not impose any capital charge on cleared derivative contracts. When the Finance Board adopted those regulations, the only type of cleared derivative contracts that the Banks used were exchange-traded futures contracts, which the Banks did not use to a significant degree. The Banks, however, have long used OTC derivative contracts in connection with their business, principally for hedging purposes. Given the Dodd-Frank Act clearing requirements, Banks will now be required to clear a significant percentage of their OTC derivative contracts. For that reason, FHFA determined that it was prudent to apply a capital charge to the Banks' exposure under such contracts. Because a futures contract is a type of cleared derivative contract, such contracts will be subject to the new capital charges.

[27] *See* discussion *infra* section II.C.4.iii, addressing the requirements under § 1277.4(e)(2).

[28] This capital charge for cleared derivative contracts is consistent with the minimum total capital charge that would be applicable to cleared derivative contracts under the standardized approach in the capital rules adopted by federal banking regulators. For example, the risk weight applied to a cleared derivative contract under the FDIC regulations is two percent of the trade exposure amount. *See* 12 CFR 324.35(b)(3)(i)(A), (c)(3). The total capital ratio required under the FDIC regulations is eight percent of the risk-weighted asset. *See* 12 CFR 324.10(a)(3). Thus, the required capital for a cleared contract would be eight percent of the contract's risk weight, which would be two percent of its exposure amount, or 0.16 percent of the exposure amount. FHFA, however has not adjusted the charge to account for any additional capital amounts needed to comply with the capital conservation buffer under the federal banking regulators' rules.

[29] Section 1277.4(e)(5)(ii)(A) provides that the current credit exposure for a cleared derivative contract is to be calculated in accordance with § 1277.4(i)(1)(i), which sets forth the method to calculate current credit exposures for a single derivative contract. As noted in the proposed rule, given that most clearing organizations effectively settle a cleared derivative contract at the end of the day, the current credit exposure for any such contract often would be zero or a small amount, depending on the timing of the daily settlement.

[30] Generally, this amount should equal the initial margin that a Bank would post under its derivative contracts with a particular counterparty.

holding such collateral, with the rating determined in accordance with § 1277.4(f)(1)(ii), and using the column in Table 2 for items with a maturity of one year or less. The Banks asked that FHFA clarify the final rule by stating that they need not discount the value of the collateral they have posted when applying this provision. FHFA agrees that they need not do so and has revised § 1277.4(e)(1)(iii) to refer to ''the *undiscounted* amount of collateral posted by the Bank.''

The Banks also questioned the appropriateness of applying a capital charge to the excess collateral they post on a derivative contract, contending that any such collateral would equal the initial margin, which they suggested performs a similar risk mitigation and protection function as potential future exposure. The Banks reasoned that assessing a capital charge for both the potential future exposure under the contract and for any collateral posted to cover initial margin would be duplicative, and that FHFA should remove the capital charge on the excess collateral from the rule. FHFA does not agree that these risk exposures are the same and therefore has made no change to § 1277.4(e)(1) of the final rule in response to this comment. The potential future exposure component of the rule addresses the risk to the Bank that the counterparty will not make payment on its obligations under the derivative contract, whereas the provision addressing the excess collateral posted by the Bank is intended to address the risk to the Bank that the entity holding its collateral will not return it to the Bank. Imposing a capital charge on both of these credit exposures also is consistent with actions taken by the federal banking regulators in the context of cleared derivatives contracts, where the minimum total capital charge that applies to those contracts under the standardized approach in those capital rules includes such a provision.[31]

Collateral Valuation—Cleared Derivative Contracts

The credit risk capital charge related to the excess collateral that a Bank pledges to its counterparty for a cleared derivative has been revised from the proposed rule in response to Bank comments on a related issue, and now differs from the corresponding charge for an uncleared derivative. The Banks had questioned the provision of the proposed rule that addressed excess collateral, noting that collateral posted to a DCO to cover initial margin must be held by the DCO under strict legal requirements, including segregation, control, and investment limitations, all of which protect the initial margin from loss and largely eliminate credit risk arising from the pledging of the collateral. FHFA agrees with that assessment and therefore has amended § 1277.4(e)(5)(ii)(C) of the final rule so that it now imposes a capital charge on excess collateral posted for a cleared derivative only if the collateral is held by the custodian in a manner that is not ''bankruptcy remote.'' If the excess collateral is held in a manner that is bankruptcy remote, then the final rule does not impose any capital charge on that collateral, *i.e.,* the final rule effectively assigns a zero capital charge to any such excess collateral held by a custodian in a manner that is bankruptcy remote. This provision also is consistent with the regulations of the other federal banking regulators, which recognize this risk and have instituted similar capital charges for excess collateral posted to their institutions' DCO derivative counterparties that is not held in a manner that is bankruptcy remote.[32]

iii. Reduction of Credit Risk Capital Charge Calculated Under § 1277.4(e)(2)

Section 1277.4(e)(2) of the final rule also includes two provisions that would allow a Bank to reduce the capital charge on an uncleared derivative contract if its counterparty has provided collateral to support its payment obligation or has obtained a third-party guarantee for its payment obligations. First, under § 1277.4(e)(2)(i) a Bank may reduce its credit risk capital charge for the current and potential future exposures of its derivative contracts based on the discounted value of collateral posted by the counterparty. As noted previously, the substance of this provision is the same as the proposed rule, but the language has been revised to provide greater clarity. This provision specifies the manner in which the Bank may apply the counterparty's collateral—first, to reduce the current credit exposure, and second, to reduce the potential future exposure. In such cases, the capital charge for the derivative contract will equal the amount of the initial capital charge that remains after having been reduced by the value of the pledged collateral. The final rule requires that a Bank also must hold capital against that portion of the discounted collateral that the Bank has applied to reduce its exposure. The Banks' comment letter suggested that the language describing the calculation of the capital charge for the collateral was ambiguous with respect to whether the collateral must be multiplied by the applicable CRPR before or after it is applied to reduce the exposures. FHFA intended that the capital charge for the pledged collateral would be assessed only after the full amount of the discounted collateral had been applied to reduce the credit exposures, and has amended § 1277.4(e)(2)(i) of the final rule to clarify that intent.

Second, under § 1277.4(e)(2)(ii) a Bank may adjust the otherwise applicable capital charge for any derivative contract for which the counterparty's payment obligation is unconditionally guaranteed by a third party. This provision is permissive, not mandatory, and allows the Banks the option of using either the CRPR associated with the derivative counterparty or that associated with the guarantor, whichever results in the lower capital charge.

iv. Collateral Eligibility Requirements—Derivative Contracts

With respect to collateral pledged by a counterparty, § 1277.4(e)(2)(i) provides that the collateral must satisfy the eligibility requirements set out in § 1277.4(e)(3) before it may be used to reduce the otherwise applicable capital charge on the derivative contract. As discussed previously, the eligibility provisions of § 1277.4(e)(3) of the final rule are unchanged from the proposed rule. That section generally requires that the collateral must be held by the Bank or its custodian, be legally available to absorb losses, be of a readily determinable value at which it can be liquidated, and be subject to an appropriate discount.[33] These provisions of the final rule are intended to ensure that any collateral pledged by a counterparty must meet certain minimum standards before a Bank may use it to reduce the otherwise applicable credit risk capital charge for its derivative contracts. These standards are slightly more stringent than the collateral standards in the current Finance Board regulation, but they are consistent with the stricter requirements for derivative contracts that have

[31] In this rule, FHFA has not required that the Banks adjust the capital charge to account for any additional capital amounts needed to comply with the capital conservation buffer, as is the case under the federal banking regulators' rules.

[32] *See, e.g.,* 12 CFR 217.35(b)(2)(i)(B) (Federal Reserve System); 12 CFR 324.35(b)(2)(i)(B) (FDIC).

[33] Collateral held by a third-party custodian must be held pursuant to a custody agreement that satisfies the requirements of 12 CFR 1221.7(c), (d) of FHFA's regulations, regarding margin and capital requirements for covered swap entities. The collateral discount also must be at least equal to the minimum discount required under appendix B to part 1221 of the FHFA regulations.

evolved subsequent to the recent financial crisis.[34]

The final rule does not limit the collateral that a Bank may accept to those items that satisfy the eligibility requirements for collateral under the uncleared derivatives rule, because not all Bank derivative counterparties are subject to these requirements.[35] This is a change from the current Finance Board regulation, which allows Banks to take account of collateral held against derivatives exposures only if a member or affiliate of the member holds the collateral. The current rule also does not impose specific minimum discounts on any type of collateral but allows a Bank to determine a suitable discount.

v. Calculation of Current and Potential Future Credit Exposures on Derivative Contracts

Calculation of Current Exposure on Derivative Contracts

A separate provision of the final rule, § 1277.4(i), addresses the method for calculating a Bank's current and potential future credit exposures under a derivative contract. This paragraph of the final rule is identical to the proposed rule except for the addition of a new provision that allows the Banks to use an initial margin model that is employed by a derivatives clearing organization as one option for calculating the potential future credit exposure on their derivative contracts. As proposed, the final rule carries over the same approach for calculating the current credit exposure as under the Finance Board regulations. Specifically, § 1277.4(i)(1)(i) provides that the current credit exposure for a single derivative contract that is not subject to an eligible master netting agreement equals the marked-to-market value of the contract if that value is positive or zero if that marked-to-market value is zero or negative. The Banks' comment letter requested that § 1277.4(i)(1)(i) be revised ''to specify that the mark-to-market value for cleared derivative contracts is *de minimis.*'' FHFA has not made that requested revision. To the extent the Banks asked that there be no capital charge for this credit exposure or that they not be required to perform the calculation for these contracts given the small amounts involved, FHFA notes that no other financial regulator excludes a capital charge on the current credit exposure because it might be *de minimis.* Moreover, FHFA previously acknowledged in the proposed rule and reiterated in the discussion of § 1277.4(e)(5)(ii) above that the current credit exposure of a cleared derivative contract would often be zero or a small amount.[36]

Section 1277.4(i)(1)(ii) of the final rule allows a Bank to calculate on a net basis the current credit exposure for all derivative contracts that are executed with a single counterparty and that are subject to an ''eligible master netting agreement.'' FHFA has aligned the § 1277.1 definition of ''eligible master netting agreement'' with that of § 1221.2 in the FHFA regulations pertaining to margin and capital for uncleared swaps by stating that the term ''has the same meaning as set forth in § 1221.2.'' [37]

Calculation of Potential Future Credit Exposure on Derivative Contracts

Section 1277.4(i)(2) of the proposed rule would have provided a Bank three options for calculating the potential future credit exposure on a derivative contract. A Bank could use an initial margin model approved by FHFA under § 1221.8 of the margin and capital rules for uncleared swaps, or a model that has been approved by another regulator for use by the Bank's counterparty under standards that are similar to those in § 1221.8, or by using the standard calculation set forth in appendix A to part 1221 of the FHFA regulations.[38] The final rule retains each of these options. FHFA received one comment on this provision, which asked that FHFA allow the Banks the additional option of calculating the potential future credit exposure by using an initial margin model that is employed by a DCO. FHFA agrees that such DCO models would not have fit within any of the three options allowed under the proposed rule, and that they should be acceptable because they are market tested and are subject to periodic review and validation under CFTC rules. Accordingly, FHFA has added a new provision, at § 1277.4(i)(2)(iii) of the final rule, that allows a Bank to use such models for calculating the potential future credit exposures. Thus, in addition to that new provision, the final rule allows a Bank to rely on the initial margin calculation done by a swap dealer or other counterparty that uses a model approved by the CFTC, other federal banking regulator, or a foreign regulator whose model rules have been found to be comparable to the United States rules.[39] If neither party to the derivative contract uses an approved model, or if the Bank otherwise chooses, the Bank can calculate its potential future exposure using the method set forth in appendix A to part 1221.[40]

5. Determination of Credit Risk Percentage Requirements

Sections 1277.4(f) and (g) of the final rule set forth the method and criteria by which a Bank will identify the CRPRs to use when calculating the credit risk capital charges for its assets, off-balance sheet items, and derivative contracts. Section 1277.4(f) addresses the capital charges for a Bank's advances, non-mortgage assets, off-balance sheet items, derivative contracts, and non-rated assets. Section 1277.4(g) addresses the capital charges for a Bank's residential mortgage assets. The applicable CRPRs are set forth in four separate tables within those two sections. Table 1 includes the CRPRs for advances. Table 2 includes the CRPRs for internally rated non-mortgage assets, derivative contracts, and off-balance sheet items. Table 3 includes the CRPRs non-rated assets, which are cash, premises, plant and equipment, and certain specific investments. Table 4 includes the CRPRs for residential mortgage loans, residential mortgage securities, and collateralized mortgage obligations.

Section 1277.4(f). Each of the provisions of § 1277.4(f) of the final rule is the same as in the proposed rule, with the exceptions noted below. Section 1277.4(f) generally directs the Banks to use the tables included within that section to obtain the CRPRs for their advances, non-mortgage assets, off-balance sheet items, derivative contract, and non-rated assets, and includes certain exceptions to the otherwise applicable CRPRs.

[34] For any derivative transactions with swap dealers or major swap participants, the Bank would already have to meet these higher collateral standards under applicable uncleared swaps margin and capital rules. Thus, FHFA does not anticipate that the proposed change would affect transactions with these types of counterparties.

[35] *See* 12 CFR 1221.6. Under the final rule, a Bank must apply at least the minimum discount listed in appendix B of the margin and capital rule for uncleared swaps to any collateral listed in that appendix or it could apply a suitable discount determined by the Bank based on appropriate assumptions about price risk and liquidation costs to collateral not listed in appendix B.

[36] *See* Proposed Federal Home Loan Bank Capital Requirements, 82 FR 30776, 30781 n.30 (July 3, 2017); *supra* note 28.

[37] *See* 12 CFR 1221.2. The ''eligible master netting agreement'' definition under § 1221.2 was amended effective November 9, 2018. *See* Margin and Capital Requirements for Covered Swap Entities; Final Rule, 83 FR 50805, 50813 (Oct. 10, 2018).

[38] *See* 12 CFR 1221.8; 12 CFR part 1221, appendix A. As no Bank is currently a swap dealer or major swap participant that otherwise needs to develop an initial margin model, FHFA expects the Banks would generally rely on the calculations done by a counterparty using its approved model or using appendix A to the part 1221 rules.

[39] *See* 12 CFR 1221.9.

[40] *See* Final Rule on Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840, 74881–882 (Nov. 30, 2015), as amended, 83 FR 50805 (Oct. 10, 2018).

CRPRs for Advances: Table 1. The proposed rule included a version of Table 1 that was much the same as the corresponding table in the current Finance Board regulations, except that it included modestly higher CRPRs for advances than those in the current regulation. The Banks' comment letter asked that FHFA either reinstate the CRPRs from the current Finance Board regulation or lower them to levels below those in the current regulation. The Banks reasoned that lower capital charges for advances were warranted because no Bank has ever suffered a credit loss on an advance to a member, but the Banks did not propose a new methodology that FHFA could use for deriving reduced CRPRs for their advances. The final rule retains in Table 1 the CRPRs that were included in the proposed rule. As FHFA explained in the proposed rule, advances, which represent approximately two-thirds of the Banks' assets, do present some degree of credit risk, and thus should be included within the risk-based capital requirements. That degree of credit risk is difficult to measure precisely because there is no comparable loss history for advances as there is, for example, for corporate debt instruments. The Finance Board determined that the capital charge for advances should be greater than zero but less than the capital charge for other assets rated at the highest investment grade. Accordingly, it developed a methodology for setting the CRPRs for advances within that range based on the estimated default rate of investment grade corporate debt securities and a specific loss-given-default rate, as described in the proposed rule. FHFA believes that the original methodology remains a reasonable approach for estimating credit risk associated with advances, and thus has retained that approach in Table 1 of the final rule. In determining the CRPRs for advances, FHFA had the benefit of default data that was more recent than what had been available to the Finance Board, as well as a more standardized methodology.[41] The fact that the CRPRs in the final rule are modestly higher than the current CRPRs is solely a result of employing the updated methodology. Moreover, the amount of risk-based capital that a Bank must hold against its advances remains modest, in keeping with the very low risk posed by advances.

CRPRs for Internally Rated Assets: Table 2. Under the existing Finance Board regulations, the CRPRs used to calculate the capital charges for non-mortgage assets, off-balance sheet items, and derivative contracts are determined based on a table that delineates the CRPRs by NRSRO rating and maturity range. The proposed rule would have made two revisions to that table. First, as required by the Dodd-Frank Act, the proposal would have replaced the NRSRO rating categories with FHFA Credit Ratings categories, to which the Banks would have to assign the instruments covered by the table based on their own internal credit ratings. Second, FHFA included revised percentages for most of the CRPRs within Table 2 because FHFA had updated both the data and the methodology that the Finance Board had used to develop the original CRPRs. As a result of those updates, the CRPR percentages for most of the line items in proposed Table 2 were higher than those in the current Finance Board regulation. As explained in the proposed rule, FHFA derived the CRPRs in proposed Table 2 using a modified version of the Basel II internal ratings-based credit risk model. FHFA received no comments on the methodology used to derive the CRPRs in proposed Table 2 or on the requirement for the Banks to use their internal credit ratings, and therefore is adopting Table 2 as proposed.[42] The Banks' comment letter asked that FHFA clarify that the language in the column heading that refers to an instrument's ''remaining maturity'' means the ''weighted average life of the asset,'' rather than its contractual maturity. FHFA based the table on bond credit losses over a specific time horizon, and not the weighted average life of those assets, and therefore believes that the remaining contractual maturity is the appropriate measure. In the final rule FHFA has revised the heading of Table 2 to state that the ratings are ''Based on Remaining Contractual Maturity'' to make that point clear.

The FHFA Credit Rating categories in Table 2 are intended to achieve the same purpose previously served by the NRSRO credit ratings, which is to create a hierarchy of credit risk exposure categories, to which a Bank would assign each instrument covered by Table 2. FHFA has established the individual FHFA Credit Rating categories, and the CRPR for each category, based on historical loss experience. In this respect, the categories of FHFA Credit Ratings are comparable to the NRSRO ratings categories, which also are based on historical loss experience. Because of that common foundation, and because Table 2 of the final rule has the same number of categories as the corresponding table in the current Finance Board regulation, there should be a high correlation between the categories of the new and old tables. For example, the historical loss experience for the ''highest investment grade'' category used in the current Finance Board regulation should correspond closely to the historical loss experience that FHFA determined for the FHFA 1 Credit Rating category in Table 2 of the final rule, and the same should be true for the remaining categories.

The final rule differs from the current Finance Board regulation by requiring that each Bank determine the appropriate FHFA Credit Rating category for each instrument covered by Table 2. The Bank would do so by first calculating its own internal credit rating for each instrument, as required by § 1277.4(f)(1)(ii), rather than by determining the instrument's NRSRO rating, as is the case under the current regulation. Each Bank then would need to map its various internal credit ratings to one of the FHFA Credit Rating categories in Table 2. Given the similarity in structure and basis between Table 2 of the final rule and the corresponding table in the current Finance Board regulations, as well as the historical data connection of both tables to historical loss rates reflected in NRSRO ratings, the Banks should be able to map their internal credit ratings to the appropriate FHFA Credit Rating categories in Table 2 of the final rule in a straightforward manner. Because the final rule relies on a Bank's internal credit ratings and the manner in which it maps those internal ratings to the appropriate FHFA Credit Rating category, it is possible that the CRPR for a particular instrument or counterparty determined under the final rule would differ from the CRPR that is assigned under the current regulations. Because the internal ratings methodologies may differ from Bank to Bank, it also is possible that one Bank may rate a particular instrument differently from another Bank.

The final rule does not require a Bank to obtain FHFA approval of either its method of calculating the internal credit rating or its mapping of such ratings to the FHFA Credit Ratings categories. Instead, § 1277.4(f)(1)(ii) of the final rule provides that a Bank's rating method must involve an evaluation of

[41] Proposed Federal Home Loan Bank Capital Requirements, 82 FR 30776, 30782–30783 (July 3, 2017) (discussing in detail the new methodology to derive the CRPRs for Table 1.1 in the proposed rule, which is Table 1 in the final rule).

[42] *See* Proposed Federal Home Loan Bank Capital Requirements, 82 FR 30776, 30786 (July 3, 2017) (setting forth the methodology used to derive proposed Table 2).

counterparty or asset risk factors, which may incorporate, but not rely solely upon, credit ratings available from an NRSRO or other credit rating entities. An evaluation of a risk factors may include measures of the counterparty's scale, earnings, liquidity, asset quality, or capital adequacy, among other things. FHFA intends to rely on the examination process to review the Banks' internal rating methodologies and mapping processes, which is appropriate because the Banks have been using internal rating methodologies for some time, and any adjustments to those methodologies that may be required for supervisory reasons would not likely have a material effect on a Bank's overall credit risk capital requirement. FHFA also has revised a related provision of the final rule, § 1277.4(f)(4), which now requires a Bank to provide to FHFA, upon request, the methodology, model, and analyses used to assign these instruments to their FHFA Credit Rating categories. That provision also authorizes FHFA to direct any Bank to revise its methodology or model to remedy any deficiencies identified by FHFA. The proposed rule would have allowed FHFA, on a case-by-case basis, to direct a Bank to change the calculated credit risk capital charge for particular instruments, as necessary to remedy any deficiency that FHFA identified with respect to a Bank's internal credit rating methodology for those instruments. FHFA revised this provision in response to the Banks' comment letter, which suggested that it would be more appropriate for FHFA to require a Bank to revise its methodology and model than for FHFA to direct a Bank to revise capital charges for individual instruments on a case-by-case basis. FHFA agrees with the Banks' suggestion and has revised both § 1277.4(f)(4), which pertains to Table 2, and § 1277.4(g)(2)(iii), which pertains to Table 4, for mortgage assets, in the manner described above.

CRPRs for Non-Rated Assets: Table 3. The proposed rule included a version of Table 3 that was identical to the corresponding table in the current Finance Board regulation.[43] FHFA received no comments on this table and is adopting it as proposed. Table 3 sets forth the CRPRs for Non-Rated Assets, which are defined as cash, premises, plant and equipment, and investments authorized under 12 CFR 1265.3(e) and (f).

Reduced Charges for non-mortgage assets. Section 1277.4(f)(2) of the final rule provides for two exceptions to the process described above for determining the capital charges for non-mortgage assets that are secured by certain collateral or are subject to an unconditional guarantee from a third-party. This provision is unchanged from the proposed rule and carries over provisions from the current Finance Board regulations. Under those provisions, a Bank may substitute the CRPR associated with the guarantor or the collateral for the charge associated with the portion of the non-mortgage asset that is subject to the guarantee or collateral. Section 1277.4(f)(2)(ii) describes the conditions that must be satisfied in order for the collateral to be deemed to ''secure'' the non-mortgage asset. The final rule also includes a separate but similar provision, located at § 1277.4(j), that allows the Banks the option of using credit derivatives that meet the requirements of that section to reduce or eliminate the otherwise applicable capital charges on their non-mortgage assets. Section 1277.4(j) is the same as the proposed rule, apart from two instances in which FHFA has replaced the term ''book value'' with ''amortized cost, or fair value'' when referring to the calculation of the capital charge for hedged non-mortgage assets. The substance of this provision also is the same as the current Finance Board regulation. The final rule does not alter the substance of the current Finance Board regulations as to the criteria that a Bank must meet for this special provision to apply or the method of calculating the capital charges. Generally, under this provision, a Bank would be able to substitute the capital charge associated with the credit derivatives (as calculated under § 1277.4(e)) for all or a portion of the capital charge calculated for the non-mortgage assets, if the hedging relationships meet the criteria in the proposed provision.[44]

Charge for Obligations Issued by the Enterprises. Section 1277.4(f)(3) of the proposed rule would have applied a capital charge of zero to any non-mortgage debt instrument issued by either of the Enterprises, recognizing that they are currently operating with the financial support of the United States and thus present no credit risk. The final rule retains this provision with only one revision, which clarifies that the zero capital charge may continue only for so long as the Enterprises' debt obligations actually are supported by the United States. When the capital support provided by the U.S. Government ceases, the capital charges for Enterprise debt instruments will be determined by using the appropriate CRPR in Table 2 in the same manner as would be the case for any debt instruments issued by other entities, *i.e.,* based on the Bank's internal credit rating for the issuing Enterprise and the maturity of the instrument. At present, the financial support provided by the U.S. Department of the Treasury under the Senior Preferred Stock Purchase Agreements (PSPA)[45] ensures that the Enterprises will repay these obligations, which effectively eliminates the credit exposure otherwise associated with these instruments and warrants a capital charge of zero while the instruments continue to have the financial support of the United States. The Banks' comment letter asked that the final rule also apply a zero percent capital charge to the non-mortgage debt instruments issued by other GSEs. The Banks made the same request with respect to § 1277.4(g)(2)(i), which assigns a zero percent capital charge for mortgage-related obligations issued by the Enterprises. The Banks reasoned that the obligations of all GSEs should be treated equally for risk-based capital purposes. FHFA has not included those requested changes in the final rule. FHFA has assigned a zero percent capital charge to those Enterprise obligations because of the explicit financial support provided by the United States through the PSPAs. The obligations of other GSEs are not similarly backed by the United States, and therefore a zero percent capital charge is not warranted.

Credit Risk Capital Charge for Multifamily MBS and CMBS. Under the proposed rule both multifamily MBS and CMBS would constitute ''non-mortgage assets'' and Banks would determine their capital charges by reference to Table 2. This approach is the same as under the current Finance Board regulations and is retained in the final rule without change.[46] The Banks'

[43] In the Finance Board regulations, the corresponding table is designated as ''Table 1.4'' but the assets and CRPRs included within that table are the same as those of Table 3 of this final rule.

[44] *See* Final Finance Board Capital Rule, 66 FR 8262, 8292–94 (Jan. 30, 2001).

[45] *See https://www.fhfa.gov/Conservatorship/Pages/Senior-Preferred-Stock-Purchase-Agreements.aspx* (containing links to the PSPAs and to the First, Second, and Third Amendments to them, as well as to the Letter Agreement of December 21, 2017, on capital reserves).

[46] Although multifamily MBS and CMBS are backed by loans that are secured by a mortgage on real estate, they are treated as ''non-mortgage assets'' for regulatory capital purposes because their underlying loans are not ''residential mortgage loans,'' which term includes only loans that are

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comment letter asked that FHFA either apply the capital charges for single family MBS (which are set out in Table 4) to multifamily MBS or develop a separate table for capital charges for multifamily MBS that would be based on their loss histories. The Banks also asked that FHFA develop a separate table of capital charges for CMBS based on their loss history. The Banks did not, however, provide any supporting data on loss histories for those instruments from which FHFA might conceivably develop separate capital charges for those assets.

FHFA has not incorporated either of those suggestions into the final rule. With respect to multifamily MBS, FHFA notes that the final rule allows the Banks to apply a zero capital charge to any Fannie Mae or Freddie Mac multifamily securities they own if they are covered by the financial support currently provided by the U.S. Department of the Treasury under the PSPAs. Currently, the vast majority of the multifamily MBS owned by the Banks are issued by Fannie Mae and Freddie Mac. Accordingly, those instruments likely would qualify for a zero capital charge under § 1277.4(f)(3). FHFA also notes that the Banks typically do not own any CMBS. Consequently, FHFA does not consider it necessary to develop separate tables or to employ an alternative methodology. Furthermore, in the event a multifamily MBS or CMBS security does not qualify for a zero capital charge under § 1277.4(f)(3), the final rule requires the Banks to determine the capital charge based principally on their own internal credit rating of the instrument, which would allow them an opportunity to more closely align their capital charge to their assessment of the associated credit risk, provided the Banks have developed adequate support for their ratings of particular instruments.

Credit Risk Capital Charge for Residential Mortgage Assets. Section 1277.4(g)(1) of the proposed rule would have established the capital charges for residential mortgage assets that would be equal to the amortized cost, or fair value, of the asset multiplied by the CRPR assigned to the asset under Table 4 of proposed § 1277.4(g). The principal difference between the proposed rule and the current Finance Board regulations was that the proposal would have replaced the current NRSRO ratings-based approach for determining the capital charge for a mortgage asset with one based on each Bank's internal rating of the individual asset. To do that, the proposed rule would have required each Bank to develop a methodology to assign an internal credit risk rating to each mortgage asset, then to align each of its internal ratings to the appropriate category of the table of capital charge percentages set out in the proposed rule. After aligning its internal ratings to the FHFA table, each Bank would have been required to assign each mortgage asset to the appropriate category of the table, based on its internal credit risk rating for that asset. The proposed rule also would have required the Banks to align their internal credit ratings to the categories in Table 4 with reference to the terms ''AMA Investment Grade'' and ''Investment Quality,'' *i.e.,* by ensuring that any internal ratings that a Bank mapped to one of the four highest categories in that table could include only assets that would qualify as either ''AMA Investment Grade'' or ''Investment Quality,'' as those terms are defined in 12 CFR 1268.1 and 1267.1 for mortgage loans and investment securities, respectively. The proposal also would have required that a Bank's internal ratings categories, like the categories in Table 4, be ranked based on their respective credit quality, *i.e.,* that the credit risk associated with each category would increase progressively, when viewing the categories from top to bottom. Additionally, § 1277.4(g)(1) of the proposed rule included two exceptions to the capital charges set out in Table 4, which would allow the Banks to assign a zero capital charge to any mortgage assets that are guaranteed or insured by the full faith and credit of the United States, or that have been guaranteed by one of the Enterprises while it was receiving financial support from the United States. Lastly, the proposal included a provision allowing FHFA to direct a Bank to adjust the capital charges for individual mortgage assets, as necessary to account for any deficiencies that FHFA may find in its internal credit rating methodology.

The Banks' comment letter addressed several issues relating to these provisions. The Banks first questioned the capital charges for CMOs under Table 4, contending that they were disproportionately high when compared to the credit risk associated with the securities that the Banks typically acquire. The Banks asked that the final rule revise the capital charges for CMOs in categories 3 through 7 of Table 4 by making them the same as those for similarly rated mortgage-backed securities structured as pass-through instruments. The Banks also asked that FHFA revise § 1277.4(g)(1)(iii), which requires each Bank to align each of its internal ratings to a category in Table 2, so that it would require the Banks to consider the potential future losses on a particular mortgage asset when making that alignment. The Banks reasoned that the amount of risk-based capital required for a particular mortgage asset should be equal to the amount of capital needed to protect against future potential losses under the 99.9 percent confidence level stress scenario assumed by FHFA. Lastly, the Banks asked that FHFA revise § 1277.4(g)(2)(iii), which would allow FHFA to require a Bank to change the capital charge for particular assets if FHFA determined the Bank's methodology to be deficient, so that it would instead authorize FHFA to require changes to a Bank's methodology, rather than to the capital charges for individual assets.

With respect to the capital charges for CMOs, FHFA had explained in the proposed rule that the use of the term ''subordinated classes'' within the table in the Finance Board regulation created an ambiguity regarding the application of the capital charges within that table. The Finance Board table has two separate sets of capital charges—those in the top half of the table appear under the heading of ''type of residential mortgage asset,'' while those in the bottom half appear under the heading ''subordinated classes of mortgage assets.'' Each half of that table has seven categories, each of which corresponds to a particular NRSRO credit rating. The capital charges for each of top two categories in each half of the Finance Board table—which correspond to instruments with NRSRO ratings of AAA or AA—are identical, meaning, for example, that a pass-through MBS with an NRSRO rating of AA would carry the same capital charge as a CMO with the same rating. For the remaining five categories in each half of the table, however, the capital charges in the bottom portion of the table are higher than those in the top portion of the table. It is FHFA's belief that the Finance Board intended that all of the categories in the top half of the table were to be applied only to whole mortgage loans and to mortgage pass-through securities, and that all of the categories in the bottom half of the table were to apply to ''structured'' mortgage-related securities, such as CMOs. The fact that the Finance Board assigned identical capital charges for the top two categories of pass-through securities and the top two categories of structured securities is consistent with reading the

secured by a mortgage on a residential structure that contains a one-to-four family dwelling unit.

table in that manner. That said, FHFA also recognizes that the Banks may have construed the term ''subordinated classes,'' as used in the bottom half of the table, as meaning that those capital charges were to apply only to the subordinated tranches of a CMO, *i.e.,* any tranches other than the most senior tranche, and that the capital charge for the most senior tranche of any CMO should be determined based on the CRPRs in the top half of the table. In proposing to revise the table headings FHFA intended to give effect to the Finance Board's original intent for this table. Thus, the proposed rule would have revised the subheading for the bottom half of the table by replacing ''subordinated classes of mortgage assets'' with ''categories for collateralized mortgage obligations'' to make that point clear. The principal effect of the proposed revision would be that Banks would determine the capital charge for the most senior tranche of their CMO investments based on the percentages set out in the bottom half of Table 4, rather than those from the top half of the table. As the Banks noted in their comment letter, they typically invest only in highly rated CMOs. Under the current Finance Board regulation, a CMO tranche with an NRSRO rating of AAA or AA would carry the same capital charge regardless of whether a Bank used the CRPRs in the top or bottom half of the table, but in the event an NRSRO were to downgrade that instrument, the capital charges calculated under the bottom half of the table would be higher than those calculated under the top half. In a similar fashion, if a Bank were to lower its internal rating of an existing CMO investment to below the top two FHFA Rating Categories, then the proposed rule would have required it to use the higher CRPR from the bottom half of the table. The proposed rule would not have affected the capital charges for the Banks' investments in any subordinated CMO tranches because the Banks already use the CRPRs in the bottom half of the table to determine the capital charges for those instruments.

FHFA has not incorporated the Banks' request to reduce the capital charges for the lower rated categories of CMOs to equal those for pass-through MBS into the final rule. As noted above, FHFA's sole objective in revising the headings to Table 4 was to eliminate an ambiguity from the existing table of capital charges, with the intent of giving effect to the Finance Board's original intent regarding capital charges for all CMOs. Moreover, because FHFA, based on its experience with the mortgage markets and the Banks' role in them, saw no need to alter any of the CRPRs for mortgage loans and mortgage-related assets, it had not developed any analytical data that could support revisions to the CRPRs for CMOs in the final rule. The Banks' comment letter also did not provide any data on which FHFA might reasonably rely to reduce the capital charges for the lower-rated categories of CMOs. In the absence of such information, FHFA cannot introduce such revised CRPRs into the final rule. The final rule, however, does include other provisions that should address the Banks' concern about the capital charges for the lower-rated categories of CMOs being disproportionate to their credit risk. First, § 1277.4(g)(1)(i) of the final rule will require that the Banks apply the CRPR for a particular mortgage asset only to the asset's amortized cost (or fair value), not to its book value as is currently the case. The use of amortized cost should result in lower capital charges for lower-rated CMOs, even if the CRPR for the asset remains the same, because the amortized cost will generally be lower than book value, such as when the Bank has recognized a loss on an asset through a charge for an other-than-temporary impairment. Second, as described in more detail below, FHFA has incorporated into § 1277.4(g)(1)(iii) of the final rule new language, derived from one of the Banks' comments, regarding the use of potential future losses as a measure of the capital charge for a particular mortgage asset. That revision should address the Banks' concern about the CRPRs for the lower-rated categories of CMOs being disproportionate to their credit risk because the amount of risk-based capital that a Bank would have to hold for any mortgage-related asset would be based principally on the amount of the potential future loss from the current amortized cost that a Bank estimates for such asset.

As noted above, the Banks' comment letter asked that the final rule clarify that the measure of risk-based capital should be the amount needed to cover the potential future losses under a stress scenario assumed by FHFA, and that the potential future losses should be measured from the amortized cost, or fair value, of the asset. FHFA agrees with the comment regarding the use of potential future losses and has revised § 1277.4(g)(1)(iii) of the final rule accordingly. The Banks appear to have been principally concerned that the proposed rule could be read as requiring them to calculate the risk-based capital requirement for a CMO based on its face or par value, regardless of whether the Bank had previously recorded as a loss through income that portion of the CMO's par value that the Bank had determined to be other-than-temporarily-impaired. Although the proposed rule explicitly stated that the capital charge for any mortgage asset is to be the product of the appropriate CRPR and the amortized cost of the asset, FHFA has revised the final rule to clarify the relationship between amortized cost and potential future losses. The proposed rule implied, but did not state explicitly, that the appropriate FHFA credit rating category should be determined by assessing the risk that the Bank may incur further loss or charge-off to the remaining amortized cost value of the CMO and other mortgage-related securities. For example, for a Bank that owns a CMO for which it has previously charged off 40 percent of the par value, FHFA had intended that the proposed rule would have required the Bank to then assess the likelihood of incurring additional losses to the remaining 60 percent of the par value (or current amortized cost value) of the CMO to determine how much risk-based capital is required. Under the proposed rule, if a Bank were to determine that the likelihood of additional loss to its amortized cost value is near zero, it could assign to the CMO a very high internal rating, which would have allowed the Bank to assign the CMO to one of the higher FHFA credit rating categories in Table 4, resulting in a low capital charge. That would be true even if the CMO carried a significantly lower NRSRO rating, because an NRSRO rating does not take into account the extent to which a particular investor may have charged off a portion of the security. To make that process more clear, FHFA has revised § 1277.4(g)(1)(iii) of the final rule to state explicitly that the Banks must estimate the potential future losses that may yet occur on their mortgage assets from their current amortized cost (or fair value).

The Banks' request to add language about potential future losses into the regulation also prompted FHFA to revise another aspect of the rule relating to the methodology to be used in assigning individual mortgage assets to the particular categories in Table 4 of the final rule. The proposed rule would have required the Banks to develop a methodology to assign an internal credit rating to each mortgage-related asset, and then align their internal ratings to the FHFA credit rating categories set forth in Table 4, in order to determine

the credit risk-based capital requirement for each asset. The Banks asked that FHFA revise the final rule to state explicitly that the internal ratings ''should at least in part be related to [a Bank's] potential future losses.'' The Banks reasoned that the required amount of risk-based capital should be the amount needed to protect against potential future losses determined under a stress scenario. In considering that comment, FHFA determined that using potential future losses as the method for assigning mortgage assets to the categories in Table 4 was a superior approach to that described in the proposed rule.[47] FHFA also agrees that the most appropriate method of estimating potential future losses is through use of a mortgage asset stress test. Using the potential future stress-loss estimates as the basis for assigning a mortgage asset to the appropriate category of Table 4 also would be a simpler and more direct means for the Banks to determine the capital charge than under the proposed rule, which as a practical matter would have required a Bank to determine a potential future stress-loss estimate for each mortgage asset, then convert that estimate into an internal rating, and then map each internal rating to a corresponding FHFA credit rating category in Table 4.

Accordingly, FHFA has revised § 1277.4(g)(1)(iii) of the final rule to require that each Bank develop a methodology to estimate the potential future stress losses on each mortgage-related asset that may yet occur from its current amortized cost. The Banks must then convert the estimate for each asset into a stress loss percentage, which is to be expressed as a percentage of the amortized cost (or fair value) of the mortgage asset. The Banks would then use that percentage to determine the appropriate category in Table 4 to be used for determining the CRPR for each mortgage asset, with the charges for AMA and mortgage pass-through securities being taken from the top half of the table and the charges for all CMOs and other structured mortgage assets being taken from the bottom half of the table. To do so, the Banks would assign each mortgage asset to the FHFA credit rating category from Table 4 whose CRPR equals the asset's stress loss percentage or, if those two amounts are not equal, to the FHFA category with the next highest percentage. For example, the CRPR for a mortgage-backed pass-through security assigned to the FHFA RMA rating category of ''2'' under the final rule is 0.60 percent of the security's amortized cost. If a Bank were to determine that such a security had a potential future loss estimate of 0.55 percent of the remaining amortized cost value, it would assign that security to the FHFA 2 category, and would apply the 0.60 percent CRPR. If a Bank were to determine, however, that the security had a potential future loss estimate of 0.61 of its amortized cost, then it must assign the security to the FHFA RMA rating category of ''3'' and apply the 0.86 CRPR required for instruments in that category. Under this approach, the regulatory capital charge will exceed the loss estimate by some amount whenever the loss estimate falls between the CRPRs specified for two adjacent categories of Table 4. That also would have been the case under the proposed rule, given that Table 4 uses categories of CRPRs, rather than the exact amount of the loss estimate.

Because of the revised approach described above, the final rule does not include the language from § 1277.4(g)(1)(iii) of the proposed rule that would have required the Banks to develop their own methodologies to assign internal ratings to all mortgage assets and then map those internal ratings to the appropriate categories in Table 4. FHFA also has not carried over the provisions of the proposed rule that would have directed the Banks to establish a hierarchy of relative creditworthiness for each of their internal ratings categories and ensure that any asset assigned to the top four FHFA ratings categories have a credit quality at least equal to ''AMA Investment Grade'' (for AMA) or ''Investment Quality'' (for mortgage-related securities).

As described previously, § 1277.4(g)(2)(i) and (iii) of the proposed rule included two exceptions that provided for a capital charge of zero for mortgage assets that are guaranteed by either of the Enterprises while they are receiving capital support from the federal government, or that are subject to a guarantee or insurance provided by a federal department or agency that carries the full faith and credit of the United States. The final rule revises the first exception slightly by adding language clarifying that the zero capital charge for Enterprise instruments will continue ''only for so long as'' the Enterprises' instruments are receiving capital support or other form of direct financial assistance from the United States government that enables them to repay their obligations. The financial support currently provided by the United States Department of the Treasury under the PSPAs qualifies under this provision. This exception is identical in substance to § 1277.4(f)(3), which allows the Banks to apply a zero capital charge to any non-mortgage-related debt instruments issued by the Enterprises. The intent of these revisions is to make clear that the zero capital charge for Enterprise obligations will terminate when the capital support provided by the United States ceases. The final rule adopts without change the other exception under § 1277.4(g)(2)(ii) for instruments backed by the full faith and credit of the United States. As also noted previously in the discussion of § 1277.4(f)(4), FHFA has revised § 1277.4(g)(2)(iii) of the final rule in response to the Banks' comment letter. As revised, this provision requires a Bank to provide its methodology for estimating future stress losses and related documents to FHFA upon request, and authorizes FHFA to require a Bank to revise its methodologies to address any deficiencies identified by FHFA. The new provision replaces language in the proposed rule that would have authorized FHFA to direct a Bank to revise capital charges for individual assets on a case-by-case basis to remedy any deficiencies in the methodology.

Frequency of Calculation. Section 1277.4(k) of the proposed rule would have reduced the frequency with which a Bank would be required to calculate its credit risk capital charges from monthly to at least quarterly, unless directed otherwise by FHFA. The final rule adopts this provision without change, apart from the addition of a reference to mortgage pools to the list of assets described. The amounts of the assets and other items on which the risk-based capital requirement is calculated would be determined as of the last business day of the immediately preceding calendar quarter.[48] Notwithstanding that quarterly

[47] FHFA recently issued new guidance on the Banks' use of models and methodologies for assessing mortgage-asset credit risk arising from AMA programs and investments. *See* Advisory Bulletin AB 2018–02 (April 25, 2018). That guidance encourages Banks to assess the credit risk by using a loan-level mortgage-asset credit risk model to estimate the potential future losses of the asset under a stress scenario acceptable to FHFA. Although that bulletin did not specifically address the assessment of credit risk in the context of the risk-based capital requirements for mortgage assets, the degree of credit risk associated with a particular investment is the same regardless of the regulatory context in which it is being measured. The bulletin states that the potential future stress-loss estimate on a mortgage-related asset can be used as an appropriate measure of the economic capital that the Banks can consider when conducting their due diligence prior to purchasing a mortgage-related asset.

[48] For example, early in the second calendar-year quarter, a Bank would need to calculate its credit risk capital charge based on assets, off-balance sheet items and derivative contracts held as of the last business day of the first calendar year quarter.

calculation requirement, § 1277.3 separately requires that each Bank at all times maintain permanent capital in an amount at least equal to its risk-based capital requirement. FHFA construes these two provisions as requiring that each Bank will monitor how their business activities and associated risks evolve during a calendar quarter such that a Bank can ensure maintenance of sufficient risk-based capital throughout the quarter as well as when the requirement is recalculated at the end of the quarter. Section 1277.4(k) also explicitly reserves FHFA's right to require a Bank to conduct its risk-based capital calculations more frequently than quarterly, which FHFA may require if it determines that circumstances warrant such change. In prior years, the Banks' total risk-based capital requirements have not varied significantly from quarter to quarter. Because of that, FHFA has determined that the reduced frequency of the required calculations should not raise any safety or soundness concerns that cannot be addressed through FHFA's normal supervisory and examination functions. FHFA anticipates that the reduction in the frequency of the required risk-based capital calculations will reduce the operational burdens on the Banks.

D. Market Risk Capital Requirements

Section 1277.5 of the proposed rule would have carried over nearly all of the Finance Board regulation addressing the market risk capital requirement, with the exceptions noted below. The proposed rule would have repealed the existing requirement that market risk capital must include an amount equal to the extent to which the current market value of the Bank's total capital is less than 85 percent of the book value of its total capital. The proposed rule also would have revised the language regarding independent validations of a Bank's internal market risk to require that they be performed periodically, commensurate with their risk, rather than annually, as is the case currently. In addition, the proposal would have reduced the number of times that each Bank would be required to conduct the market risk calculations from monthly to quarterly. The proposed rule included a grandfather provision, the effect of which was to make clear that any internal market risk models that FHFA or its predecessor had previously approved would be deemed to satisfy the approval requirement under the new FHFA regulation. The Banks did not comment on those proposed revisions, all of which have been included in § 1277.5 of the final rule. The change regarding the required frequency of a Bank's calculation of its market risk capital requirement under the proposed rule from monthly to quarterly was done so that it would correspond to the frequency of calculation for the Bank's credit risk capital requirement. Thus, under the final rule each Bank will be required to calculate its market risk capital requirement at least quarterly under § 1277.5(e), based on assets held as of the last business day of the immediately preceding calendar quarter, unless otherwise instructed by FHFA. The Bank would be expected to meet the calculated capital charges throughout the quarter.

The Banks' comment letter asked that FHFA revise § 1277.5(b)(4)(ii) by changing the starting date for the historical observation period required under that provision from ''1978'' to ''1992.'' The Banks reasoned that doing so would align the regulation with guidance that FHFA had issued on that topic.[49] During the period following receipt of the comment, FHFA undertook empirical testing to consider whether using a 1998 start date would diminish the severity of the scenarios that the Banks currently include in the stress test. That testing showed that the Banks could use an historical observation period that commenced in 1998 without compromising the severity of the stress scenarios used by the Banks. Accordingly, FHFA issued revised guidance addressing the scenarios to be used by the Banks' market risk models, which allowed the use of an observation period commencing in 1998.[50] In light of that development, FHFA has revised § 1277.5(b)(4)(ii) of the final rule so that it too provides that the starting date for the historical observation period must go back to the beginning on 1998.

E. Operational Risk Capital Requirement

The current Finance Board regulations set the operational risk capital requirement at 30 percent of the sum of the credit risk and market risk capital requirements, but allow a Bank to reduce that requirement to as low as 10 percent of the sum of those two amounts by obtaining FHFA's approval for an alternative methodology for quantifying operations risk or by obtaining insurance from a company with an NRSRO credit rating of AA or better. Section 1277.6 of the proposed rule would have carried over the current approach, but would have replaced the NRSRO credit rating provision with language requiring that the insurer be acceptable to FHFA. The Banks' comment letter asked that FHFA eliminate the 10 percent threshold, reasoning that it was not necessary if FHFA were to approve an alternative methodology, and that FHFA provide analytical support for the 10 and 30 percent provisions described above.

FHFA has decided to retain the 10 percent floor in § 1277.6 of the final rule, believing that there are prudential reasons for doing so. Although this provision has been in the Finance Board regulations since they were first adopted, no Bank has ever developed an alternative methodology for measuring operational risk for which it has sought the agency's approval. Thus, FHFA has had no prior opportunity to evaluate alternative methods for measuring operational risk or to determine whether any such Bank-developed alternatives would provide sufficient capital to cover a Bank's actual operational risks. Although there are challenges to quantifying operational risk at any financial institution, operational risks at the Banks do exist and should be supported by adequate capital. Even if a Bank were to develop an alternative methodology for measuring operational risk, however, FHFA has no reason to believe that the alternative methodology would necessarily be so precise as to capture fully all potential operational loss risks to which a Bank would be exposed. Given those uncertainties, FHFA believes that retaining the 10 percent floor provides some reasonable assurance that the amount of risk-based capital required by the operational risk capital provision would be sufficient if FHFA ever were to allow a Bank to use an alternative methodology for measuring those risks.

With respect to the Banks' second request, regarding the analytical support for the 10 and 30 percent requirements, FHFA has not undertaken any additional analyses to support those two provisions, both of which FHFA proposed to carry over unchanged from the Finance Board regulations. However, the Banks' letter did not provide any empirical data or other materials demonstrating that the amount of capital required by the current regulation is excessive or what other levels would be more appropriate measures for the operational risk capital requirement. As noted above, there are challenges to developing a methodology for measuring operational risk, and the financial institution regulatory agencies have yet to achieve consensus on how best to do so. In the absence of any

[49] *See* Revised Technical Guidance for Calculation of Market Risk Capital Requirements (Apr. 25, 2013).

[50] *See* Advisory Bulletin AB 2018–01 (Feb. 7, 2018).

widely accepted standards for determining the amount of capital needed to support the operational risks associated with a Bank's operations, which might provide a basis for displacing the Finance Board's judgment, FHFA believes that the existing 30 percent operational risk charge continues to provide a reasonable measure of capital to protect against those risks, and has not proven to be burdensome to the Banks over the years that it has been in effect. FHFA recognizes that assessing a Bank's operational risk exposure is challenging and therefore intends to continue monitoring developments in the industry in pursuit of an improved approach.

F. Limits on Unsecured Extensions of Credit

Section 1277.7 of the proposed rule generally would have carried over the Finance Board unsecured credit limits with only one significant revision, which was to remove all references to NRSRO credit ratings, on which the Finance Board limits were based. In their place, the proposed rule would have required a Bank to assign each counterparty an internal credit rating and use that rating to place the counterparty into one of the five FHFA credit rating categories in Table 1 to § 1277.7. The proposed rule also would have revised the existing limit for unsecured credit exposures to GSEs. The Finance Board regulations set that limit at the lesser of the Bank's total capital or the GSE's total capital, which was considerably higher than the limit for the most highly rated non-GSE counterparties, which was 15 percent (or 30 percent when including overnight federal funds transactions) of the lesser of those amounts. The proposed rule would have subjected all GSEs to the same unsecured credit limits as any other non-GSE counterparty, with the exception of any GSEs operating with direct financial assistance from the United States, for which the limit would be equal to the Bank's total capital.

The Banks' comment letter addressed several of these provisions under proposed § 1277.7, asking that the final rule apply the same unsecured credit limit to all GSEs, regardless of whether they are operating with the financial support of the United States. Further, the Banks asked that FHFA reinstate the existing 100 percent of capital limit as the unsecured credit limit for all GSEs, rather than treat GSEs the same as other non-GSE counterparties, and that it clarify how the limits will apply after a GSE operating with federal financial support loses that support. The Banks also asked that FHFA change the frequency of credit reporting to FHFA from monthly to quarterly, and revise the provision regarding debt that is guaranteed by a third party so that it allows, rather than mandates, that the Banks consider the guarantor to be the counterparty for regulatory purposes. With respect to reporting frequency, FHFA is retaining the existing monthly reporting requirements in § 1277.7(e), which require a Bank to report to FHFA any unsecured exposures that exceed 5 percent of the lesser of its capital or the counterparty's capital, as well as the amount of any secured and unsecured exposures that exceed 5 percent of the Bank's total assets. FHFA believes that receiving monthly reports of each Bank's secured and unsecured credit exposures above those thresholds is important to its supervisory responsibilities and thus has not accepted that suggestion. With respect to guarantors, FHFA agrees with the comment and has revised § 1277.7(a) so that Banks may, but are not required to, treat a third-party guarantor as if it were the counterparty for purposes of the unsecured credit limit. With the exception of that revision and those described below, the final rule is the same as the proposed rule.

FHFA Credit Ratings. The principal substantive revision made by the final rule is that, as in the proposed rule, a Bank will determine the unsecured credit limits for a particular counterparty based on its internal credit rating for that counterparty, rather than on an NRSRO credit rating. Section 1277.7(a)(4) of the final rule directs a Bank to use its internal credit rating to assign a counterparty to the appropriate FHFA Credit Rating category in Table 1 to § 1277.7, and further provides that the credit rating category assigned for unsecured credit purposes shall be the same as the FHFA category that the Bank would use under Table 2 of § 1277.4 if it were determining the risk-based capital charge for an obligation issued by that counterparty. The substance of that requirement had been located in § 1277.7(a)(5) of the proposed rule, which also would have required a Bank to align its internal credit ratings to the FHFA Rating Categories in Table 1 of § 1277.7 ''using the same methodology'' that it uses for the risk-based capital categories. FHFA has deleted the reference to the methodology from the final rule and relocated into § 1277.7(a)(4) the sentence requiring the FHFA credit rating categories to be the same for both capital and unsecured credit purposes. The final rule also removes all distinctions between short- and long-term ratings. The Finance Board regulations distinguished between those ratings because the NRSRO ratings on which the regulations were based included those distinctions. Under the final rule, a Bank would determine a single rating for a specific counterparty or obligation when applying the unsecured credit limits, regardless of the term of the underlying unsecured credit obligations.

Limits on Exposure to a Single Counterparty. The final rule retains most of the structure and operational aspects of the current Finance Board regulation on unsecured credit exposures. Thus, § 1277.7(a)(1) of the final rule sets a general limit on unsecured credit exposures to a single counterparty that includes all extensions of unsecured credit to that counterparty, other than unsecured exposures arising from sales of federal funds that have a maturity of one day or less or that are subject to a continuing contract. Section 1277.7(a)(2) of the final rule sets a separate additional overall limit that includes all unsecured extensions of credit to that counterparty, including all sales of federal funds. The overall limit for a single counterparty is set at twice the amount of the general limit. A Bank determines the limit for a particular counterparty by obtaining the appropriate maximum capital exposure limit (which is expressed as a percentage) for that counterparty from Table 1 to § 1277.7 and then multiplying the lesser of the Bank's total capital or the counterparty's Tier 1 capital by that percentage.[51] As described previously, a Bank will obtain the appropriate maximum capital exposure limit for a particular counterparty from Table 1, based on its internal credit rating of that counterparty. The numerical limits for each of the five categories within Table 1 of the final rule are the same as those in the current rule. The only difference between Table 1 of the final rule and the corresponding table in the Finance Board regulations is that the categories in the final rule are labeled as ''FHFA Credit Rating'' categories, rather than as categories based on NRSRO ratings.[52]

[51] If the counterparty is not subject to a Tier 1 capital requirement, a Bank may use the counterparty's total capital or some similar comparable measure identified by the Bank. The terms ''total capital'' and ''Tier 1 capital'' are to be as defined by the counterparty's principal regulator.

[52] The Finance Board explained its reasons for setting these maximum capital exposure limits when it proposed the current unsecured credit rule. *See* Proposed Rule on Unsecured Credit Limits for Federal Home Loan Banks, 66 FR 41474, 41478–80 (Aug. 8, 2001). The Finance Board also explained its reasons for limiting sales of overnight federal funds when it adopted the current unsecured credit

Section 1277.7(d) of the final rule addresses how the unsecured credit limit for a particular counterparty will be affected if a Bank revises its internal rating for that counterparty. This is similar to a provision of the current Finance Board regulations, which is based on NRSRO rating downgrades of a counterparty or obligation. The final rule provides that if a Bank revises its internal credit rating for a particular counterparty or obligation, it shall thereafter assign the counterparty or obligation to the appropriate FHFA Credit Rating category in Table 1 based on that revised internal rating. The final rule further provides that if the revised rating results in a lower FHFA Credit Rating category, then any subsequent extension of unsecured credit must comply with the new limit calculated using the lower internal credit rating. The final rule makes clear, however, that a Bank need not unwind any existing unsecured credit exposures as a result of the lower limit, provided they were originated in compliance with the unsecured credit limits in effect at that time. The final rule continues to consider any renewal of an existing unsecured extension of credit, including a decision not to terminate a sale of federal funds subject to a continuing contract, as a new transaction, which would be subject to the recalculated limit.

Affiliated Counterparties. Section 1277.7(b) of the final rule would readopt without substantive change the current provision of the Finance Board regulation limiting a Bank's aggregate unsecured credit exposure to groups of affiliated counterparties. Thus, in addition to being subject to the limits on individual counterparties, a Bank's unsecured credit exposure from all sources, including federal funds transactions, to all affiliated counterparties under the final rule could not exceed thirty percent of the Bank's total capital. The final rule would also readopt the current definition of affiliated counterparty.

State, Local or Tribal Government Obligations. Section 1277.7(a)(3) of the final rule also carries over without substantive change from the Finance Board regulations the special provision applicable to calculating limits for certain unsecured obligations issued by state, local or tribal governmental agencies. This provision allows a Bank to calculate the limit for these covered obligations based on its total capital—rather than on the lesser of the Bank or counterparty's capital—and the internal credit rating assigned to the particular obligation. As under the current rule, all obligations from the same issuer and having the same assigned rating may not exceed the limit associated with that rating, and the exposure from all obligations from that issuer cannot exceed the limit calculated for the highest rated obligation that a Bank actually has purchased. As explained by the Finance Board when it adopted the current rule, this special provision reflected the fact that the state, local or tribal agencies at issue often had low capital, their obligations had some backing from collateral but were not always fully secured in the traditional sense, and the Banks' purchase of these obligations had a mission nexus.[53]

GSE Provision. Section 1277.7(c) of the final rule carries over without change from the proposed rule the special limit that applies to a GSE counterparty that is operating with capital support or other form of direct financial assistance from the United States government that enables it to repay its obligations. In such cases, the limit for all unsecured credit exposures, including all federal funds transactions, equals 100 percent of the Bank's total capital. That limit currently applies to the Banks' exposures to the Enterprises by virtue of FHFA Regulatory Interpretation 2010–RI–05 (Nov. 9, 2010), which the final rule codifies. As noted above, the Banks requested that FHFA extend this same limit to other GSEs that are not operating with the direct financial support of the United States. FHFA declines to do so because the unsecured credit obligations of those other GSEs are not supported by the United States through means such as the PSPAs, as are the obligations of the Enterprises, and that distinction alone warrants having different unsecured credit limits. Thus, the unsecured extensions of credit to a single counterparty provisions under § 1277.7(a) remain unchanged from the proposed rule and therefore are applicable to GSEs that are not backed by the capital support of the United States government. The Banks also asked FHFA to clarify that the special limit described above for GSEs operating with capital support from the United States would continue in effect through the maturity of the instruments, even after the capital support ceases. Because compliance with the unsecured credit limits is determined at the time that a Bank extends the unsecured credit, the loss of the financial support of the United States for a GSE at some point in the future will not cause any then-existing unsecured credit exposures made under the limits of this provision to violate the regulation. Thus, Banks with such exposures may allow them to mature in the normal course after the financial support ceases. Because the loss of the financial support of the United States will cause the unsecured credit limits for those GSEs to drop, however, from 100 percent of a Bank's capital to a maximum of 15 percent (or 30 percent when including overnight federal funds) of a Bank's capital, the immediate effect of the loss of the federal financial support will be to prevent the Banks from making any new extensions of unsecured credit to those GSEs until after the amount of their then-existing unsecured credit has been reduced to below the new exposure limit. That new exposure limit will be determined for each GSE under Table 1 to § 1277.7 based on a Bank's internal rating of the GSE at that time. Section 1277.7(d) of the final rule addresses the situation where a counterparty's internal rating changes, and specifically provides that a Bank need not unwind any existing unsecured credit exposures, which would include those extended to GSEs, as a result of a new and lower limit being imposed, provided that the existing exposures were within the applicable limit when originated. FHFA has not included in the final rule the Banks' request that FHFA retain the existing special unsecured credit limit for all GSEs, which allows unsecured credit exposures of up to 100 percent of the lesser of the Bank's total capital or the counterparty's total capital. As noted above, FHFA has preserved a special limit for GSEs, but only for those that are operating with the direct financial support of the United States. The proposed rule reflected FHFA's policy judgment that unsecured credit limits for all counterparties, other than those explicitly backed by the United States, should be determined based on the Banks' assessment of the credit risk posed by those counterparties. Tying the unsecured credit limit to an assessment of creditworthiness of the counterparty also introduces a degree of market discipline that is absent under the current Finance Board regulations. This approach is consistent with that taken by FHFA with respect to the treatment

regulation, stating that Banks have financial incentives to lend into the federal funds markets, *i.e.,* the GSE funding advantage and a limited range of permissible investments, and that permitting such lending without limits would be imprudent. *See* Final Rule on Unsecured Credit Limits for Federal Home Loan Banks, 66 FR 66718, 66720–21 (Dec. 27, 2001) (Finance Board Final Unsecured Credit Rule).

[53] *See* Finance Board Final Unsecured Credit Rule, 66 FR at 66723–24 (Dec. 27, 2001).

of GSE collateral under the rule on uncleared derivative contracts.[54]

Measurement of Unsecured Extensions of Credit. Section 1277.7(f) of the final rule establishes the requirements for measuring a Bank's unsecured credit exposures. FHFA received no comments on this provision and is adopting it without change from the proposed rule. For on-balance sheet transactions, other than for derivative transactions that have not been accepted for clearing by a derivatives clearing organization, § 1277.7(f)(1)(i) of the final rule provides that the unsecured extension of credit shall equal the amortized cost of the transaction plus net payments due the Bank. If a Bank carries an item at fair value where any change in fair value is recognized in income, the rule provides that the unsecured extension of credit shall equal the fair value of the item, rather than its amortized cost. This approach is similar to the approach applied under § 1277.4 for calculating credit risk capital charges for non-mortgage assets. FHFA believes that this approach best captures the amount that a Bank has at risk should a counterparty default on any unsecured credit extended by the Bank. For an off-balance sheet item, § 1277.7(f)(1)(ii) provides that the unsecured extension of credit shall equal the credit equivalent amount for that item, calculated in accordance with § 1277.4(h).

Section § 1277.7(f)(1)(iii) of the final rule addresses how to measure the unsecured credit exposure related to an uncleared derivative transaction. In that case, the amount of the unsecured extension of credit equals the sum of the Bank's current and future potential credit exposures under the contract (which amount may be reduced by certain collateral held by the Bank, as described below), plus the amount of any collateral posted by the Bank that exceeds the amount the Bank owes to its counterparty and that is held by a person or entity other than a third-party custodian that is acting under a custody agreement that meets the requirements of FHFA's margin and capital rule for uncleared swaps.[55] With respect to a Bank's use of collateral pledged by its counterparty to reduce the Bank's current and future exposures on a derivative contract, § 1277.7(f)(1)(iii)(A) of the final rule requires that the collateral must meet the requirements of § 1277.4(e)(2) and (3), which address the manner in which a Bank may use collateral to reduce the credit risk capital charge on a derivative contract, and the terms under which the collateral must be held in order to be eligible to reduce those charges, respectively.

As with the current rule, § 1277.7(f)(2) provides that any debt obligation or debt security (other than a mortgage-backed security, other asset-backed security, or acquired member asset) shall be considered to be an unsecured extension of credit for purposes of the unsecured credit limits. The final rule carries over the existing exception from the Finance Board regulations that excludes from the unsecured credit limits any amount owed to the Bank under a debt obligation or debt security for which the Bank holds collateral consistent with the requirements of § 1277.4(f)(2)(ii) or any other amount that FHFA determines on a case-by-case basis should not be considered to be an unsecured extension of credit.

Exceptions to the unsecured credit limits. Section 1277.7(g) of the final rule provides four separate exceptions to the regulatory limits on extensions of unsecured credit. One of those exceptions provides that a derivative contract that is accepted for clearing by a derivatives clearing organization is not subject to the unsecured credit limits. FHFA proposed this exception to avoid any conflict with the Dodd-Frank Act, which mandated that parties clear certain standardized derivative transactions. When a Bank submits a derivative contract for clearing, the derivatives clearing organization becomes the Bank's counterparty to the contract. There are only a limited number of derivatives clearing organizations that the Banks can use to clear their derivative contracts, and in some cases there may be only a single organization that clears specific classes of derivative contracts. Because of those factors, imposing the unsecured limits on cleared derivative contracts could make it difficult for the Banks to fulfill the legal requirement that they clear all of these contracts, which would frustrate the intent of the Dodd-Frank Act. In addition, because the derivatives clearing organizations are subject to comprehensive federal regulatory oversight, including regulations designed to protect the customers that use the clearing services, FHFA believes that the Banks will not be exposed to any undue risks as a result of this exception. Notwithstanding the exception, FHFA expects that the Banks will develop internal policies to address their unsecured credit exposures to specific clearing organizations that take account of the Bank's specific derivatives activity and clearing options.

The Banks' comment letter viewed this provision as encompassing the collateral that a Bank may post with the derivatives clearing organization and asked that FHFA make this point clear in the preamble to the final rule. FHFA agrees with that suggestion, but has addressed the matter by revising the text of § 1277.7(g)(2) to include an explicit reference to such collateral. The three other exceptions to the unsecured credit limits, which pertain to obligations of or guaranteed by the United States, extensions of credit between Banks, and investments in certain bonds issued by state housing finance agencies, prompted no comments and are included in paragraphs (g)(1), (3), and (4) to the final rule without change from the proposed rule.

III. Considerations of Differences Between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.[56] FHFA noted this requirement in the proposed rule and requested comments from the public on the extent to which any of those factors may be implicated by the proposed rule. FHFA did not receive any comments on this topic, and in preparing this final rule, has considered the differences between the Banks and the Enterprises as they relate to the above factors.

IV. Paperwork Reduction Act

The final rule amendments do not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any

[54] FHFA and other prudential regulators jointly issued a regulation addressing the margin and capital rules for uncleared swaps. In the margin and capital final rules, the agencies provide different treatment for collateral issued by a GSE that is operating with explicit United States government support from collateral that is issued by other GSEs. *See* Final Rule on Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840, 74870–71 (Nov. 30, 2015).

[55] *See* 12 CFR 1221.7(c), (d). Thus, the amount of collateral that is posted by a Bank and is segregated with a third-party custodian consistent with the requirements of the swaps margin and capital rule would not be included in the Bank's unsecured credit exposure arising from a particular derivative contract.

[56] *See* 12 U.S.C. 4513.

information to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act [57] requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[58] FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the regulation applies only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

VI. Congressional Review Act

In accordance with the Congressional Review Act,[59] FHFA has determined that this final rule is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

List of Subjects

12 CFR Parts 930 and 932

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

12 CFR Part 1277

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the Preamble, and under the authority of 12 U.S.C. 1426, 1436(a), 1440, 1443, 1446, 4511, 4513, 4514, 4526, and 4612, FHFA amends subchapter E of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

Subchapter E—[Removed and Reserved]

■ 1. Subchapter E, consisting of parts 930 and 932, is removed and reserved.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter D—Federal Home Loan Banks

PART 1277—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS, CAPITAL STOCK AND CAPITAL PLANS

■ 2. The authority citation for part 1277 continues to read as follows:

Authority: 12 U.S.C. 1426, 1436(a), 1440, 1443, 1446, 4511, 4513, 4514, 4526, 4612.

Subpart A—Definitions

■ 3. Amend § 1277.1 by adding in alphabetical order definitions for ''Affiliated counterparty,'' ''Bankruptcy remote,'' ''Collateralized mortgage obligation,'' ''Commitment to make an advance or acquire a loan subject to certain drawdown,'' ''Credit derivative,'' ''Credit risk,'' ''Derivatives clearing organization,'' ''Derivative contract,'' ''Eligible master netting agreement,'' ''Exchange rate contracts,'' ''Government Sponsored Enterprise,'' ''Internal cash-flow model,'' ''Internal market-risk model,'' ''Market risk,'' ''Market value-at-risk,'' ''Non-mortgage asset,'' ''Non-rated asset,'' ''Operational risk,'' ''Residential mortgage,'' ''Residential mortgage asset,'' ''Residential mortgage security,'' ''Sales of federal funds subject to a continuing contract,'' and ''Total assets'' to read as follows:

§ 1277.1 Definitions.

* * * * *

Affiliated counterparty means a counterparty of a Bank that controls, is controlled by, or is under common control with another counterparty of the Bank. For the purposes of this definition only, direct or indirect ownership (including beneficial ownership) of more than 50 percent of the voting securities or voting interests of an entity constitutes control.

Bankruptcy remote means, in the context of any asset that a Bank has posted as collateral to a counterparty, that the asset would be excluded from that counterparty's estate in receivership, insolvency, liquidation, or similar proceeding.

* * * * *

Collateralized mortgage obligation, or *CMO,* means any instrument backed or collateralized by residential mortgages or residential mortgage securities, that includes two or more tranches or classes, or is otherwise structured in any manner other than as a pass-through security.

Commitment to make an advance or acquire a loan subject to certain drawdown means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

Credit derivative means a derivative contract that transfers credit risk.

Credit risk means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in the creditworthiness of the obligor.

Derivatives clearing organization means an organization that clears derivative contracts and is registered with the Commodity Futures Trading Commission as a derivatives clearing organization pursuant to section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1), or that the Commodity Futures Trading Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Commodity Exchange Act (7 U.S.C. 7a–1(h)), or is registered with the Securities and Exchange Commission as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), or that the SEC has exempted from registration as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(k)).

Derivative contract means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit derivative contracts, and any other instruments that pose similar counterparty credit risks.

Eligible master netting agreement has the same meaning as set forth in § 1221.2 of this chapter.

Exchange rate contracts include cross-currency interest-rate swaps, forward foreign exchange rate contracts, currency options purchased, and any similar instruments that give rise to similar risks.

* * * * *

Government Sponsored Enterprise, or *GSE,* means a United States Government-sponsored agency or instrumentality established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not obligations of the United States and are not guaranteed by the United States.

Internal cash-flow model means a model developed and used by a Bank to estimate the potential evolving changes in the cash flows and market values of a portfolio for each month, extending

[57] 5 U.S.C. 601 *et seq.*

[58] 5 U.S.C. 605(b).

[59] *See* 5 U.S.C. 804(2).

out for a period of years, subject to a variety of plausible time paths of changes in interest rates, volatilities, and option adjusted spreads, and that incorporates assumptions about new or revolving business, including the roll-off and possible replacement of assets and liabilities as required.

Internal market-risk model means a model developed and used by a Bank to estimate the potential change in the market value of a portfolio subject to an instantaneous change in interest rates, volatilities, and option-adjusted spreads.

Market risk means the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, or equity or commodity prices.

Market value-at-risk is the loss in the market value of a Bank's portfolio measured from a base line case, where the loss is estimated in accordance with § 1277.5.

* * * * *

Non-mortgage asset means an asset held by a Bank other than an advance, a non-rated asset, a residential mortgage asset, a collateralized mortgage obligation, or a derivative contract.

Non-rated asset means a Bank's cash, premises, plant and equipment, and investments authorized pursuant to § 1265.3(e) and (f) of this chapter.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events.

* * * * *

Residential mortgage means a loan secured by a residential structure that contains one-to-four dwelling units, regardless of whether the structure is attached to real property. The term encompasses, among other things, loans secured by individual condominium or cooperative units and manufactured housing, whether or not the manufactured housing is considered real property under state law, and participation interests in such loans.

Residential mortgage asset, or *RMA,* means any residential mortgage, residential mortgage pool, or residential mortgage security.

Residential mortgage security means any instrument representing an undivided interest in a pool of residential mortgages.

Sales of federal funds subject to a continuing contract means an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower.

Total assets mean the total assets of a Bank, as determined in accordance with generally accepted accounting principles (GAAP).

* * * * *

■ 4. Add subpart B, consisting of §§ 1277.2 through 1277.8, to read as follows:

Subpart B—Bank Capital Requirements

Sec.

1277.2 Total capital requirement.
1277.3 Risk-based capital requirement.
1277.4 Credit risk capital requirement.
1277.5 Market risk capital requirement.
1277.6 Operational risk capital requirement.
1277.7 Limits on unsecured extensions of credit; reporting requirements.
1277.8 Reporting requirements.

§ 1277.2 Total capital requirement.

Each Bank shall maintain at all times:

(a) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining this leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital by 1.5 and adding to this product all other components of total capital.

§ 1277.3 Risk-based capital requirement.

Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operational risk capital requirement, calculated in accordance with §§ 1277.4, 1277.5, and 1277.6, respectively.

§ 1277.4 Credit risk capital requirement.

(a) *General requirement.* Each Bank's credit risk capital requirement shall equal the sum of the Bank's individual credit risk capital charges for all advances, residential mortgage assets, CMOs, non-mortgage assets, non-rated assets, off-balance sheet items, and derivative contracts, as calculated in accordance with this section.

(b) *Credit risk capital charge for residential mortgage assets and collateralized mortgage obligations.* The credit risk capital charge for residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations shall be determined as set forth in paragraph (g) of this section.

(c) *Credit risk capital charge for advances, non-mortgage assets, and non-rated assets.* Except as provided in paragraph (j) of this section, each Bank's credit risk capital charge for advances, non-mortgage assets, and non-rated assets shall be equal to the amortized cost of the asset multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (f)(1) or (2) of this section. For any such asset carried at fair value where any change in fair value is recognized in the Bank's income, the Bank shall calculate the capital charge based on the fair value of the asset rather than its amortized cost.

(d) *Credit risk capital charge for off-balance sheet items.* Each Bank's credit risk capital charge for an off-balance sheet item shall be equal to the credit equivalent amount of such item, as determined pursuant to paragraph (h) of this section, multiplied by the credit risk percentage requirement assigned to that item pursuant to paragraph (f)(1) of this section and Table 2 to this section, except that the credit risk percentage requirement applied to the credit equivalent amount for a standby letter of credit shall be that for an advance with the same remaining maturity as that of the standby letter of credit, as specified in Table 1 to this section.

(e) *Derivative contracts.* (1) Except as provided in paragraphs (e)(4) (transactions with members) and (5) (cleared transactions and foreign exchange rate contracts) of this section, the credit risk capital charge for a derivative contract entered into by a Bank shall equal, after any adjustment allowed under paragraph (e)(2) of this section, the sum of:

(i) The current credit exposure for the derivative contract, calculated in accordance with paragraph (i)(1) of this section, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to Table 2 to this section, provided that a Bank shall use the credit risk percentages from the column for instruments with maturities of one year or less for all such derivative contracts; plus

(ii) The potential future credit exposure for the derivative contract, calculated in accordance with paragraph (i)(2) of this section, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to Table 2 to this section, where a Bank uses the actual remaining maturity of the derivative contract for the purpose of applying Table 2 to this section; plus

(iii) A credit risk capital charge applicable to the undiscounted amount of collateral posted by the Bank with respect to a derivative contract that exceeds the Bank's current payment obligation under that derivative contract, where the charge equals the amount of such excess collateral multiplied by the credit risk percentage requirement assigned under Table 2 to

this section for the custodian or other party that holds the collateral, and where a Bank deems the exposure to have a remaining maturity of one year or less when applying Table 2 to this section.

(2)(i) A Bank may reduce the credit risk capital charge calculated under paragraph (e)(1) of this section by the amount of the discounted value of any collateral that is held by or on behalf of the Bank against an exposure from the derivative contract, and that satisfies the requirements of paragraph (e)(3) of this section. If the total amount of the discounted value of the collateral is less than the credit risk capital charge calculated under paragraph (e)(1) of this section for a particular derivative contract, then the credit risk capital charge for the derivative contract shall equal the amount of the initial charge that remains after having been reduced by the collateral. A Bank that uses a counterparty's pledged collateral to reduce the capital charge against a derivative contract under this provision, shall also apply a capital charge to the amount of the pledged collateral that it has used to reduce its credit exposure on the derivative contract. The amount of that capital charge shall be equal to the capital charge that would be required under paragraph (b) or (c) of this section, whichever applies to the type of collateral, as if the Bank were to own the collateral directly. In reducing the capital charge on a particular derivative contract, the Bank shall apply the discounted value of the collateral for that derivative contract in the following manner:

(A) First, to reduce the current credit exposure of the derivative contract subject to the capital charge; and

(B) Second, and only if the total discounted value of the collateral held exceeds the current credit exposure of the contract, any remaining amounts may be applied to reduce the amount of the potential future credit exposure of the derivative contract subject to the capital charge.

(ii) If a counterparty's payment obligations to a Bank under a derivative contract are unconditionally guaranteed by a third-party, then the credit risk percentage requirement applicable to the derivative contract may be that associated with the guarantor, rather than the Bank's counterparty.

(3) The credit risk capital charge may be reduced as described in paragraph (e)(2)(i) of this section for collateral held against the derivative contract exposure only if the collateral is:

(i) Held by, or has been paid to, the Bank or held by an independent, third-party custodian on behalf of the Bank pursuant to a custody agreement that meets the requirements of § 1221.7(c) and (d) of this chapter;

(ii) Legally available to absorb losses;

(iii) Of a readily determinable value at which it can be liquidated by the Bank; and

(iv) Subject to an appropriate discount to protect against price decline during the holding period and the costs likely to be incurred in the liquidation of the collateral, provided that such discount shall equal at least the minimum discount required under appendix B to part 1221 of this chapter for collateral listed in that appendix, or shall be estimated by the Bank based on appropriate assumptions about the price risks and liquidation costs for collateral not listed in appendix B to part 1221.

(4) The credit risk capital charge for any derivative contracts entered into between a Bank and its members shall be calculated in accordance with paragraph (e)(1) of this section, except that the Bank shall use the credit risk percentage requirements from Table 1 to this section, which sets forth the credit risk percentage requirements for advances.

(5) Notwithstanding any other provision in this paragraph (e), the credit risk capital charge for:

(i) A foreign exchange rate contract (excluding gold contracts) with an original maturity of 14 calendar days or less shall be zero; and

(ii) A derivative contract cleared by a derivatives clearing organization shall equal 0.16 percent times the sum of the following:

(A) The current credit exposure for the derivative contract, calculated in accordance with paragraph (i)(1)(i) of this section;

(B) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (i)(2) of this section; and

(C) The amount of collateral posted by the Bank and held by the derivatives clearing organization, clearing member, or custodian in a manner that is not bankruptcy remote, but only to the extent the amount exceeds the Bank's current credit exposure to the derivatives clearing organization.

(f) *Determination of credit risk percentage requirements*—(1) *General.* (i) Each Bank shall determine the credit risk percentage requirement applicable to each advance and each non-rated asset by identifying the appropriate category from Table 1 or 3 to this section, respectively, to which the advance or non-rated asset belongs. Except as provided in paragraphs (f)(2) and (3) of this section, each Bank shall determine the credit risk percentage requirement applicable to each non-mortgage asset, off-balance sheet item, and derivative contract by identifying the appropriate category set forth in Table 2 to this section to which the asset, item, or contract belongs as determined in accordance with paragraph (f)(1)(ii) of this section, and remaining maturity. Each Bank shall use the applicable credit risk percentage requirement to calculate the credit risk capital charge for each asset, item, or contract in accordance with paragraph (c), (d), or (e) of this section, respectively. The relevant categories and credit risk percentage requirements are provided in the following Tables 1 through 3 to this section—

TABLE 1 TO § 1277.4—REQUIREMENT FOR ADVANCES

Maturity of advances	Percentage applicable to advances
Advances with:	
Remaining maturity <=4 years	0.09
Remaining maturity >4 years to 7 years	0.23
Remaining maturity >7 years to 10 years	0.35
Remaining maturity >10 years	0.51

TABLE 2 TO § 1277.4—REQUIREMENT FOR INTERNALLY RATED NON-MORTGAGE ASSETS, OFF-BALANCE SHEET ITEMS, AND DERIVATIVE CONTRACTS

[Based on remaining contractual maturity]

FHFA Credit Rating	Applicable percentage				
	<=1 year	>1 yr to 3 yrs	>3 yrs to 7 yrs	>7 yrs to 10 yrs	>10 yrs
U.S. Government Securities	0.00	0.00	0.00	0.00	0.00
FHFA 1	0.20	0.59	1.37	2.28	3.32

TABLE 2 TO § 1277.4—REQUIREMENT FOR INTERNALLY RATED NON-MORTGAGE ASSETS, OFF-BALANCE SHEET ITEMS, AND DERIVATIVE CONTRACTS—Continued

[Based on remaining contractual maturity]

FHFA Credit Rating	Applicable percentage				
	<=1 year	>1 yr to 3 yrs	>3 yrs to 7 yrs	>7 yrs to 10 yrs	>10 yrs
FHFA 2	0.36	0.87	1.88	3.07	4.42
FHFA 3	0.64	1.31	2.65	4.22	6.01
FHFA 4	3.24	4.79	7.89	11.51	15.64
FHFA 5	9.24	11.46	15.90	21.08	27.00
FHFA 6	15.99	18.06	22.18	26.99	32.49
FHFA 7	100.00	100.00	100.00	100.00	100.00

TABLE 3 TO § 1277.4—REQUIREMENT FOR NON-RATED ASSETS

Type of unrated asset	Applicable percentage
Cash	0.00
Premises, Plant and Equipment	8.00
Investments Under 12 CFR 1265.3(e) & (f)	8.00

(ii) Each Bank shall develop a methodology to be used to assign an internal credit risk rating to each counterparty, asset, item, and contract that is subject to Table 2 to this section. The methodology shall involve an evaluation of counterparty or asset risk factors, and may incorporate, but must not rely solely on, credit ratings prepared by credit rating agencies. Each Bank shall align its various internal credit ratings to the appropriate categories of FHFA Credit Ratings included in Table 2 to this section. In doing so, FHFA Categories 7 through 1 shall include assets of progressively higher credit quality. After aligning its internal credit ratings to the appropriate categories of Table 2 to this section, each Bank shall assign each counterparty, asset, item, and contract to the appropriate FHFA Credit Rating category based on the applicable internal credit rating.

(2) *Exception for assets subject to a guarantee or secured by collateral.* (i) When determining the applicable credit risk percentage requirement from Table 1 to this section for a non-mortgage asset that is subject to an unconditional guarantee by a third-party guarantor or is secured as set forth in paragraph (f)(2)(ii) of this section, the Bank may substitute the credit risk percentage requirement associated with the guarantor or the collateral, as appropriate, for the credit risk percentage requirement associated with that portion of the asset subject to the guarantee or covered by the collateral.

(ii) For purposes of paragraph (f)(2)(i) of this section, a non-mortgage asset shall be considered to be secured if the collateral is:

(A) Actually held by the Bank, or an independent third-party custodian on the Bank's behalf, or, if posted by a Bank member and permitted under the Bank's collateral agreement with that member, by the Bank's member or an affiliate of that member where the term ''affiliate'' has the same meaning as in § 1266.1 of this chapter;

(B) Legally available to absorb losses;

(C) Of a readily determinable value at which it can be liquidated by the Bank;

(D) Held in accordance with the provisions of the Bank's member products policy established pursuant to § 1239.30 of this chapter, if the collateral has been posted by a member or an affiliate of a member; and

(E) Subject to an appropriate discount to protect against price decline during the holding period and the costs likely to be incurred in the liquidation of the collateral.

(3) *Exception for obligations of the Enterprises.* A Bank may use a credit risk capital charge of zero for any debt instrument or obligation issued by an Enterprise, other than a residential mortgage security or a collateralized mortgage obligation, provided that, and only for so long as, the Enterprise receives capital support or other form of direct financial assistance from the United States government that enables the Enterprise to repay those obligations.

(4) *Methodology and model review.* A Bank shall provide to FHFA upon request the methodology, model, and any analyses used by the Bank to assign any non-mortgage asset, off-balance sheet item, or derivative contract to an FHFA Credit Rating category. FHFA may direct a Bank to promptly revise its methodology or model to address any deficiencies identified by FHFA.

(g) *Credit risk capital charges for residential mortgage assets*—(1) *Bank determination of credit risk percentage.* (i) Each Bank's credit risk capital charge for a residential mortgage, residential mortgage pool, residential mortgage security, or collateralized mortgage obligation shall be equal to the asset's amortized cost multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (g)(1)(ii) or (g)(2) of this section. For any such asset carried at fair value where any change in fair value is recognized in the Bank's income, the Bank shall calculate the capital charge based on the fair value of the asset rather than its amortized cost.

(ii) Each Bank shall determine the credit risk percentage requirement applicable to each residential mortgage, residential mortgage pool, and residential mortgage security by identifying the appropriate FHFA RMA category set forth in the following Table 4 to this section to which the asset belongs, and shall determine the credit risk percentage requirement applicable to each collateralized mortgage obligation by identifying the appropriate FHFA CMO category set forth in Table 4 to this section to which the asset belongs, with the appropriate categories being determined in accordance with paragraph (g)(1)(iii) of this section.

(iii) Each Bank shall develop a methodology to estimate the potential future stress losses on its residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations, as may yet occur from the current amortized cost (or fair value) of those assets, and that converts those loss estimates into a stress loss percentage for each asset, expressed as a percentage of its amortized cost (or fair value). A Bank shall use the stress loss percentage for each asset to determine the appropriate FHFA RMA or CMO ratings category for that asset, as set forth in Table 4 to this section. A Bank shall do so by assigning each such asset to the category whose credit risk percentage requirement equals the asset's stress loss percentage, or to the category with the next highest credit risk percentage requirement. For residential mortgages

and residential mortgage pools, the methodology shall involve an evaluation of the residential mortgages and residential mortgage pools and any credit enhancements or guarantees, including an assessment of the creditworthiness of the providers of such enhancements or guarantees. In the case of a residential mortgage security or collateralized mortgage obligation, the methodology shall involve an evaluation of the underlying mortgage collateral, the structure of the security, and any credit enhancements or guarantees, including an assessment of the creditworthiness of the providers of such enhancements or guarantees.

TABLE 4 TO § 1277.4—REQUIREMENT FOR RESIDENTIAL MORTGAGE ASSETS AND CMOS

	Credit risk percentage
Categories for residential mortgage assets:	
FHFA RMA 1	0.37
FHFA RMA 2	0.60
FHFA RMA 3	0.86
FHFA RMA 4	1.20
FHFA RMA 5	2.40
FHFA RMA 6	4.80
FHFA RMA 7	34.00
Categories for Collateralized Mortgage Obligations:	
FHFA CMO 1	0.37
FHFA CMO 2	0.60
FHFA CMO 3	1.60
FHFA CMO 4	4.45
FHFA CMO 5	13.00
FHFA CMO 6	34.00
FHFA CMO 7	100.00

(2) *Exceptions.* (i) A Bank may use a credit risk capital charge of zero for any residential mortgage asset or collateralized mortgage obligation, or portion thereof, guaranteed by an Enterprise as to payment of principal and interest, provided that, and only for so long as, the Enterprise receives capital support or other form of direct financial assistance from the United States government that enables the Enterprise to repay those obligations;

(ii) A Bank may use a credit risk capital charge of zero for any residential mortgage asset or collateralized mortgage obligation, or any portion thereof, guaranteed or insured as to payment of principal and interest by a department or agency of the United States government that is backed by the full faith and credit of the United States; and

(iii) A Bank shall provide to FHFA upon request the methodology, model, and any analyses used to estimate the potential future stress losses on its residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations, and to determine a stress loss percentage for each such asset. FHFA may direct a Bank to promptly revise its methodology or model to address any deficiencies identified by FHFA.

(h) *Calculation of credit equivalent amount for off-balance sheet items*—(1) *General requirement.* The credit equivalent amount for an off-balance sheet item shall be determined by an FHFA-approved model or shall be equal to the face amount of the instrument multiplied by the credit conversion factor assigned to such risk category of instruments by the following Table 5 to this section, subject to the exceptions in paragraph (h)(2) of this section.

TABLE 5 TO § 1277.4—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (in percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances subject to certain drawdown.	
Commitments to acquire loans subject to certain drawdown.	
Standby letters of credit	50
Other commitments with original maturity of over one year.	
Other commitments with original maturity of one year or less	20

(2) *Exceptions.* The credit conversion factor shall be zero for ''Other Commitments With Original Maturity of Over One Year'' and ''Other Commitments With Original Maturity of One Year or Less'' for which Table 5 to this section would otherwise apply credit conversion factors of 50 percent or 20 percent, respectively, if the commitments are unconditionally cancelable, or effectively provide for automatic cancellation due to the deterioration in a borrower's creditworthiness, at any time by the Bank without prior notice.

(i) *Calculation of credit exposures for derivative contracts*—(1) *Current credit exposure*—(i) *Single derivative contract.* The current credit exposure for derivative contracts that are not subject to an eligible master netting agreement shall be:

(A) If the mark-to-market value of the contract is positive, the mark-to-market value of the contract; or

(B) If the mark-to-market value of the contract is zero or negative, zero.

(ii) *Derivative contracts subject to an eligible master netting agreement.* The current credit exposure for multiple uncleared derivative contracts executed with a single counterparty and subject to an eligible master netting agreement shall be calculated on a net basis and shall equal:

(A) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to the eligible master netting agreement, if the net sum of the mark-to-market values is positive; or

(B) Zero, if the net sum of the mark-to-market values is zero or negative.

(2) *Potential future credit exposure.* The potential future credit exposure for derivative contracts, including derivative contracts with a negative mark-to-market value, shall be calculated:

(i) Using an internal initial margin model that meets the requirements of § 1221.8 of this chapter and is approved by FHFA for use by the Bank, or using an initial margin model that has been approved under regulations similar to § 1221.8 of this chapter for use by the Bank's counterparty to calculate initial margin for those derivative contracts for which the calculation is being done; or

(ii) By applying the standardized approach in appendix A to part 1221 of this chapter; or

(iii) Using an initial margin model that is employed by a derivatives clearing organization.

(j) *Credit risk capital charge for non-mortgage assets hedged with credit derivatives*—(1) *Credit derivatives with a remaining maturity of one year or more.* The credit risk capital charge for a non-mortgage asset that is hedged with a credit derivative that has a remaining maturity of one year or more may be reduced only in accordance with paragraph (j)(3) or (4) of this section and only if the credit derivative provides substantial protection against credit losses.

(2) *Credit derivatives with a remaining maturity of less than one year.* The credit risk capital charge for a non-mortgage asset that is hedged with a credit derivative that has a remaining maturity of less than one year may be reduced only in accordance with paragraph (j)(3) of this section and only if the remaining maturity on the credit derivative is identical to or exceeds the remaining maturity of the hedged non-mortgage asset and the credit derivative provides substantial protection against credit losses.

(3) *Credit risk capital charge reduced to zero.* The credit risk capital charge for a non-mortgage asset shall be zero if a credit derivative is used to hedge the credit risk on that asset in accordance with paragraph (j)(1) or (2) of this section, provided that:

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining maturity for the hedged non-mortgage asset, and either:

(A) The non-mortgage asset referenced in the credit derivative is identical to the hedged non-mortgage asset; or

(B) The non-mortgage asset referenced in the credit derivative is different from the hedged non-mortgage asset, but only if the asset referenced in the credit derivative and the hedged non-mortgage asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to, or more junior than, the hedged non-mortgage asset and has the same maturity as the hedged non-mortgage asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (e) of this section is still applied.

(4) *Capital charge reduction in certain other cases.* The credit risk capital charge for a non-mortgage asset hedged with a credit derivative in accordance with paragraph (j)(1) of this section shall equal the sum of the credit risk capital charges for the hedged and unhedged portion of the non-mortgage asset provided that:

(i) The remaining maturity for the credit derivative is less than the remaining maturity for the hedged non-mortgage asset and either:

(A) The non-mortgage asset referenced in the credit derivative is identical to the hedged non-mortgage asset; or

(B) The non-mortgage asset referenced in the credit derivative is different from the hedged non-mortgage asset, but only if the asset referenced in the credit derivative and the hedged non-mortgage asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to, or more junior than, the hedged non-mortgage asset and has the same maturity as the hedged non-mortgage asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the unhedged portion of the non-mortgage asset equals:

(A) The credit risk capital charge for the non-mortgage asset, calculated as the amortized cost, or fair value, of the non-mortgage asset multiplied by that asset's credit risk percentage requirement assigned pursuant to paragraph (f)(1) of this section where the appropriate credit rating is that for the non-mortgage asset and the appropriate maturity is the remaining maturity of the non-mortgage asset; minus

(B) The credit risk capital charge for the non-mortgage asset, calculated as the amortized cost, or fair value, of the non-mortgage asset multiplied by that asset's credit risk percentage requirement assigned pursuant to paragraph (f)(1) of this section where the appropriate credit rating is that for the non-mortgage asset but the appropriate maturity is deemed to be the remaining maturity of the credit derivative; and

(iii) The credit risk capital charge for the hedged portion of the non-mortgage asset is equal to the credit risk capital charge for the credit derivative, calculated in accordance with paragraph (e) of this section.

(k) *Frequency of calculations.* Each Bank shall perform all calculations required by this section at least quarterly, unless otherwise directed by FHFA, using the advances, residential mortgages, residential mortgage pools, residential mortgage securities, collateralized mortgage obligations, non-rated assets, non-mortgage assets, off-balance sheet items, and derivative contracts held by the Bank, and, if applicable, the values of, or FHFA Credit Ratings categories for, such assets, off-balance sheet items, or derivative contracts as of the close of business of the last business day of the calendar period for which the credit risk capital charge is being calculated.

§ 1277.5 Market risk capital requirement.

(a) *General requirement.* (1) Each Bank's market risk capital requirement shall equal the market value of the Bank's portfolio at risk from movements in interest rates, foreign exchange rates, commodity prices, and equity prices that could occur during periods of market stress, where the market value of the Bank's portfolio at risk is determined using an internal market-risk model that fulfills the requirements of paragraph (b) of this section and that has been approved by FHFA.

(2) A Bank may substitute an internal cash-flow model to derive a market risk capital requirement in place of that calculated using an internal market-risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains FHFA approval of the internal cash-flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to FHFA that the internal cash-flow model subjects the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including related options, to a comparable degree of stress for such factors as will be required for an internal market-risk model.

(b) *Measurement of market value-at-risk under a Bank's internal market-risk model.* (1) Except as provided under paragraph (a)(2) of this section, each Bank shall use an internal market-risk model that estimates the market value of the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including any related options, and measures the market value of the Bank's portfolio at risk of its assets and liabilities, off-balance sheet items, and derivative contracts, including related options, from all sources of the Bank's market risks, except that the Bank's model need only incorporate those risks that are material.

(2) The Bank's internal market-risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank's portfolio at risk, provided that any measurement technique used must cover the Bank's material risks.

(3) The measures of the market value of the Bank's portfolio at risk shall include the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options' underlying rates or prices.

(4) The Bank's internal market-risk model shall use interest rate and market price scenarios for estimating the market value of the Bank's portfolio at risk, but at a minimum:

(i) The Bank's internal market-risk model shall provide an estimate of the market value of the Bank's portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The Bank's internal market-risk model shall incorporate scenarios that reflect changes in interest rates, interest rate volatility, option-adjusted spreads, and shape of the yield curve, and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress. For interest rates, the relevant historical observations should be drawn from the period that starts at the end of the previous month and goes back to the beginning of 1998;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to FHFA;

(B) Representative of the periods of the greatest potential market stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations among interest rates.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, each Bank shall, in addition to fulfilling the criteria of paragraph (b)(4) of this section, calculate an estimate of the market value of its portfolio at risk resulting from material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(i) The probability of a loss greater than that estimated shall not exceed one percent;

(ii) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to FHFA;

(B) Representative of the periods of the greatest potential stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices.

(c) *Independent validation of Bank internal market-risk model or internal cash-flow model.* (1) Each Bank shall conduct an independent validation of its internal market-risk model or internal cash-flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the Bank. Alternatively, the Bank may obtain independent validation by an outside party qualified to make such determinations. Validations shall be done periodically, commensurate with the risk associated with the use of the model, or as frequently as required by FHFA.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to FHFA.

(d) *FHFA approval of Bank internal market-risk model or internal cash-flow model.* (1) Each Bank shall obtain FHFA approval of an internal market-risk model or an internal cash-flow model, including subsequent material adjustments to the model made by the Bank, prior to the use of any model. Each Bank shall make such adjustments to its model as may be directed by FHFA.

(2) A model and any material adjustments to such model that were approved by FHFA or the Federal Housing Finance Board shall be deemed to meet the requirements of paragraph (d)(1) of this section, unless such approval is revoked or amended by FHFA.

(e) *Frequency of calculations.* Each Bank shall perform any calculations or estimates required under this section at least quarterly, unless otherwise directed by FHFA, using the assets, liabilities, and off-balance sheet items (including derivative contracts and options) held by the Bank, and if applicable, the values of any such holdings, as of the close of business of the last business day of the calendar period for which the market risk capital requirement is being calculated.

§ 1277.6 Operational risk capital requirement.

(a) *General requirement.* Except as authorized under paragraph (b) of this section, each Bank's operational risk capital requirement shall at all times equal 30 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement.

(b) *Alternative requirements.* With the approval of FHFA, each Bank may have an operational risk capital requirement equal to less than 30 percent but no less than 10 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement if:

(1) The Bank provides an alternative methodology for assessing and quantifying an operational risk capital requirement; or

(2) The Bank obtains insurance to cover operational risk from an insurer acceptable to FHFA and on terms acceptable to FHFA.

§ 1277.7 Limits on unsecured extensions of credit; reporting requirements.

(a) *Unsecured extensions of credit to a single counterparty.* A Bank shall not extend unsecured credit to any single counterparty (other than a GSE described in and subject to the requirements of paragraph (c) of this section) in an amount that would exceed the limits of this paragraph (a). If a third-party provides an irrevocable, unconditional guarantee of repayment of a credit (or any part thereof), the third-party guarantor may be considered the counterparty for purposes of calculating and applying the unsecured credit limits of this section with respect to the guaranteed portion of the transaction.

(1) *General limits.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet and derivative transactions (but excluding the amount of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract) shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as determined in accordance with the following Table 1 to this section, multiplied by the lesser of:

(i) The Bank's total capital; or

(ii) The counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (in each case as defined by the counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Overall limits including sales of overnight federal funds.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet and derivative transactions, including the amounts of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed twice the limit calculated pursuant to paragraph (a)(1) of this section.

(3) *Limits for certain obligations issued by state, local, or tribal governmental agencies.* The limit set forth in paragraph (a)(1) of this section, when applied to the marketable direct obligations of state, local, or tribal government units or agencies that are excluded from the prohibition against investments in whole mortgage loans or other types of whole loans, or interests in such loans, by § 1267.3(a)(4)(iii) of this chapter, shall be calculated based on the Bank's total capital and the internal credit rating assigned to the particular obligation, as determined in accordance with paragraph (a)(4) of this section. If a Bank owns series or classes of obligations issued by a particular state, local, or tribal government unit or agency, or has extended other forms of unsecured credit to such entity falling into different rating categories, the total amount of unsecured credit extended by the Bank to that government unit or agency shall not exceed the limit associated with the highest-rated obligation issued by the entity and actually purchased by the Bank.

(4) *Bank determination of applicable maximum capital exposure limits.* A Bank shall determine the maximum capital exposure limit for each counterparty by assigning the counterparty to the appropriate FHFA Credit Rating category of Table 1 to this section, based upon the Bank's internal credit rating for that counterparty. In all cases, a Bank shall use the same FHFA Credit Rating category for a particular counterparty when determining its unsecured credit limit under this section as it would use under Table 2 to § 1277.4 for determining the risk-based capital charge for obligations issued by that counterparty under § 1277.4(f).

TABLE 1 TO § 1277.7—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY FHFA CREDIT RATING CATEGORY

FHFA Credit Rating	Maximum capital exposure limit (in percent)
FHFA 1	15
FHFA 2	14
FHFA 3	9
FHFA 4	3
FHFA 5 and Below	1

(b) *Unsecured extensions of credit to affiliated counterparties*—(1) *In general.* The total amount of unsecured extensions of credit by a Bank to a group of affiliated counterparties that arise from the Bank's on- and off-balance sheet and derivative transactions, including sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed 30 percent of the Bank's total capital.

(2) *Relation to individual limits.* The aggregate limits calculated under paragraph (b)(1) of this section shall apply in addition to the limits on extensions of unsecured credit to a single counterparty imposed by paragraph (a) of this section.

(c) *Special limits for certain GSEs.* Unsecured extensions of credit by a Bank that arise from the Bank's on- and off-balance sheet and derivative transactions, including from the purchase of any debt or from any sales of federal funds with a maturity of one day or less and from sales of federal funds subject to a continuing contract, with a GSE that is operating with capital support or another form of direct financial assistance from the United States government that enables the GSE to repay those obligations, shall not exceed the Bank's total capital.

(d) *Extensions of unsecured credit after reduced rating.* If a Bank revises its internal credit rating for any counterparty or obligation, it shall assign the counterparty or obligation to the appropriate FHFA Credit Rating category based on the revised rating. If the revised internal rating results in a lower FHFA Credit Rating category, then any subsequent extensions of unsecured credit shall comply with the maximum capital exposure limit applicable to that lower rating category, but a Bank need not unwind or liquidate any existing transaction or position that complied with the limits of this section at the time it was entered. For purposes of this paragraph (d), the renewal of an existing unsecured extension of credit, including any decision not to terminate any sales of federal funds subject to a continuing contract, shall be considered a subsequent extension of unsecured credit that can be undertaken only in accordance with the lower limit.

(e) *Reporting requirements*—(1) *Total unsecured extensions of credit.* Each Bank shall report monthly to FHFA the amount of the Bank's total unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

(i) The Bank's total capital; or

(ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (in each case as defined by the counterparty's principal regulator), or some similar comparable measure identified by the Bank.

(2) *Total secured and unsecured extensions of credit.* Each Bank shall report monthly to FHFA the amount of the Bank's total secured and unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

(3) *Extensions of credit in excess of limits.* A Bank shall report promptly to FHFA any extension of unsecured credit that exceeds any limit set forth in paragraph (a), (b), or (c) of this section. In making this report, a Bank shall provide the name of the counterparty or group of affiliated counterparties to which the excess unsecured credit has been extended, the dollar amount of the applicable limit which has been exceeded, the dollar amount by which the Bank's extension of unsecured credit exceeds such limit, the dates for which the Bank was not in compliance with the limit, and a brief explanation of the circumstances that caused the limit to be exceeded.

(f) *Measurement of unsecured extensions of credit*—(1) *In general.* For purposes of this section, unsecured extensions of credit will be measured as follows:

(i) For on-balance sheet transactions (other than a derivative transaction addressed by paragraph (f)(1)(iii) of this section), an amount equal to the sum of the amortized cost of the item plus net payments due the Bank. For any such item carried at fair value where any change in fair value would be recognized in the Bank's income, the Bank shall measure the unsecured extension of credit based on the fair value of the item, rather than its amortized cost;

(ii) For off-balance sheet transactions, an amount equal to the credit equivalent amount of such item, calculated in accordance with § 1277.4(h); and

(iii) For derivative transactions not cleared by a derivatives clearing organization, an amount equal to the sum of:

(A) The Bank's current and potential future credit exposures under the derivative contract, where those values are calculated in accordance with § 1277.4(i)(1) and (2) respectively, reduced by the amount of any collateral held by or on behalf of the Bank against the credit exposure from the derivative contract, as allowed in accordance with the requirements of § 1277.4(e)(2) and (3); and

(B) The value of any collateral posted by the Bank that exceeds the current amount owed by the Bank to its counterparty under the derivative

contract, where the collateral is held by a person or entity other than a third-party custodian that is acting under a custody agreement that meets the requirements of § 1221.7(c) and (d) of this chapter.

(2) *Status of debt obligations purchased by the Bank.* Any debt obligation or debt security (other than mortgage-backed or other asset-backed securities or acquired member assets) purchased by a Bank shall be considered an unsecured extension of credit for the purposes of this section, except for:

(i) Any amount owed the Bank against which the Bank holds collateral in accordance with § 1277.4(f)(2)(ii); or

(ii) Any amount which FHFA has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

(g) *Exceptions to unsecured credit limits.* The following items are not subject to the limits of this section:

(1) Obligations of, or guaranteed by, the United States;

(2) A derivative transaction accepted for clearing by a derivatives clearing organization, including collateral posted by the Bank with the derivatives clearing organization associated with that derivative transaction;

(3) Any extension of credit from one Bank to another Bank; and

(4) A bond issued by a state housing finance agency, if the Bank documents that the obligation in question is:

(i) Principally secured by high quality mortgage loans or high quality mortgage-backed securities (or funds derived from payments on such assets or from payments from any guarantees or insurance associated with such assets);

(ii) The most senior class of obligation, if the bond has more than one class; and

(iii) Determined by the Bank to be rated no lower than FHFA 2, in accordance with this section.

§ 1277.8 Reporting requirements.

Each Bank shall report information related to capital and other matters addressed by this part in accordance with instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

Dated: December 18, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

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