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Presidential Documents

Title 3—

The President

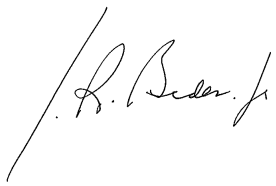
Memorandum of March 16, 2022

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to an aggregate value of $800 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 16, 2022

[FR Doc. 2022–06275
Filed 3–22–22; 8:45 am]
Billing code 4710–10–P

Presidential Documents

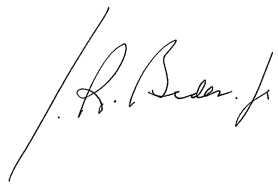
Memorandum of March 16, 2022

Delegation of Authority Under Section 552(c)(2) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 552(c)(2) of the FAA to direct the drawdown of up to $10 million in commodities and services from the inventory and resources of any agency of the United States Government to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 16, 2022

[FR Doc. 2022–06277
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Presidential Documents

Proclamation 10349 of March 18, 2022

National Poison Prevention Week, 2022

By the President of the United States of America

A Proclamation

Each year, more than 2 million poisoning cases are reported in the United States—some of which are tragically fatal, but many of which are preventable. While we have made great strides in the decades since National Poison Prevention Week was first observed 60 years ago—including a decline in unintentional poisoning—poisoning remains a risk, especially for children and older Americans. During National Poison Prevention Week, we raise awareness about the dangers posed by poisonous substances, precautions people can take to prevent an incident, and how to respond in a poison emergency.

Each year, an average of 31 children die from unintended poisonings at home, and an estimated 75,000 children under the age of five end up in hospital emergency departments from poisoning. Approximately 85 percent of unintentional poisonings take place in the home where medicines and harmful chemicals are stored.

To prevent children from unintentionally ingesting poisonous household products, it is important to keep these products out of their sight and beyond their reach. Items such as hand sanitizer, laundry detergent, medications, coin cell batteries, cleaning products, and liquid nicotine should be stored in child-resistant packaging. Medications should be safely secured, and if unused, properly discarded. For elderly Americans—particularly those who may have become isolated due to the pandemic—it is important that household products are secured in their original packaging and that medications are clearly labeled to avoid accidental ingestion or the mistaking of medications.

Health professionals working around the clock and responding to millions of calls each year at poison control centers are critical to our Nation's response. They not only help the public in need of assistance or information, they are also a tremendous asset to health care providers, health departments, law enforcement, and first responders.

If you suspect that you or someone else has been poisoned, do not wait for signs of poisoning. Immediately call the Poison Control Help line at 800–222–1222. For more information, go to poisonhelp.hrsa.gov.

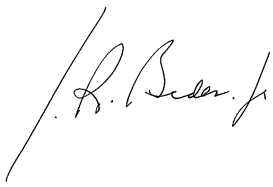
Poison awareness, control, and education are essential to saving lives. During National Poison Prevention Week, we recommit to raising awareness about the dangers of accidental poisonings and taking the necessary precautions to prevent and respond quickly to these incidents and protect our loved ones.

To encourage Americans to learn more about the dangers of unintentional poisonings and to take appropriate preventive measures, on September 26, 1961, the United States Congress, by joint resolution (75 Stat. 681), authorized and requested the President to issue a proclamation designating the third week of March each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim March 20 through March 26, 2022, to be National Poison Prevention Week. I call upon all Americans to observe

this week by taking actions to safeguard their families and friends from poisonous products, chemicals, and medicines often found in our homes, and to raise awareness of these dangers to prevent accidental injuries and deaths.

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



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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–19–0102; NOP–19–05]

RIN 0581–AD93

National Organic Program; National List of Allowed and Prohibited Substances—Crops and Handling From October 2019 NOSB

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture's (USDA) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule allows the following substances for organic production: potassium hypochlorite to treat irrigation water used in organic crop production and fatty alcohols for sucker control in organic tobacco production. This rule also removes the listing for dairy cultures, as it is redundant with an existing listing.

DATES: This rule is effective on April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Jared Clark, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the Agricultural Marketing Service's (AMS) National Organic Program (NOP) and the USDA organic regulations (65 FR 80547, December 21, 2000). Within the USDA organic regulations (7 CFR part 205) is the National List of Allowed and Prohibited Substances (or ''National List''). The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic crop and livestock production. It also identifies the nonorganic substances that may be used in or on processed organic products.

AMS is finalizing three amendments to the National List in accordance with the procedures detailed in the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6524). OFPA establishes what may be included on the National List and the procedures that the USDA must follow to amend the National List (7 U.S.C. 6517). OFPA also describes the NOSB's responsibilities in proposing amendments to the National List, including the criteria for evaluating amendments to the National List (7 U.S.C. 6518).

To remain on the National List, substances must be: (1) Reviewed every five years by the NOSB, a 15-member federal advisory committee; and (2) renewed by the Secretary (7 U.S.C. 6517(e)). This action of NOSB review and USDA renewal is commonly referred to as the ''sunset review'' or ''sunset process.'' AMS published information about this process in the **Federal Register** on September 16, 2013 (78 FR 56811). The sunset date (*i.e.,* the date by which the Secretary must renew a substance for the listing to remain valid on the National List) for each substance is included in the NOP Handbook (document NOP 5611). The first sunset date for the substances added to the National List in this final rule will be five years from the effective date in the **DATES** section of this final rule above.

This final rule adds potassium hypochlorite and fatty alcohols to the National List. Once the final rule becomes effective, producers of organic crops will be allowed to use these substances in organic production. The permitted use of each substance is discussed in detail in ''Overview of Amendments.'' This final rule also removes the listing for dairy cultures in 7 CFR 205.605(a). This removal will not affect the allowance of dairy cultures in organic production and organic products as they will continue to be allowed under the microorganisms listing in 7 CFR 205.605(a).

II. Overview of Amendments

This rule adds potassium hypochlorite and fatty alcohols to the National List for use in organic crop production. This rule also removes dairy cultures from the National List, but their allowance is continued through the microorganisms listing. Additional background on the petitions and the NOSB's review of the substances may be found in the proposed rule (86 FR 15800, March 25, 2021).

During a 60-day comment period that closed on May 24, 2021, AMS received six comments on the proposed rule. See below for a discussion of the comments received and AMS's responses to comments. Comments can be viewed through *Regulations.gov*. Use the search area on the homepage at *https://www.regulations.gov* to enter a keyword, title, or docket ID (the docket folder for this rule is AMS–NOP–19–0102).

Potassium Hypochlorite (§ 205.601)

The final rule amends the National List to add potassium hypochlorite to 7 CFR 205.601 as a synthetic, chlorine-based sanitizer allowed for use in organic crop production. This amendment allows use of potassium hypochlorite in organic crop production for the purposes of cleaning irrigation equipment and treating irrigation water.

AMS is finalizing this amendment to the National List, as recommended by the NOSB, to provide organic farmers an additional tool for treating irrigation water and cleaning irrigation equipment, which the U.S. Food and Drug Administration (FDA) requires to promote food safety (21 CFR part 112 subpart E). Potassium hypochlorite provides an alternative to sodium hypochlorite, which may cause sodium accumulation in soil with repeated use (sodium hypochlorite is allowed for use at 7 CFR 205.601(a)(2)(iv)).

NOSB Review and Recommendation

Following receipt of a petition in November 2018,[1] the NOSB recommended adding potassium hypochlorite to the National List in

[1] ''Petition to Add Synthetic Substance to National List,'' Potassium Hypochlorite Solution, November 2018, *https://www.ams.usda.gov/sites/default/files/media/PotassiumHypochloritePetition.pdf.*

October 2019.[2] In their evaluation of potassium hypochlorite, the NOSB considered comments from the public and the petition itself. The NOSB discussed the petition to amend the National List in subcommittee calls and at its public meeting in October 2019.[3]

After their evaluation, the NOSB concluded that adding potassium hypochlorite to the National List is consistent with evaluation criteria in the OFPA (7 U.S.C. 6518(m)). The NOSB found that use of potassium hypochlorite for irrigation water treatment and cleaning of irrigation equipment would be compatible with organic crop production, providing additional use benefits over sodium hypochlorite (*e.g.,* no accumulation of sodium in soil). The NOSB noted that potassium hypochlorite also provides an additional tool for organic farmers to meet the requirements of the FDA Food Safety Modernization Act (FSMA, Pub. L. 111–353).

AMS Review

AMS concludes that the addition of potassium hypochlorite to the National List is consistent with the three requirements of the OFPA (7 U.S.C. 6517(c)(1)(A)). First, when used as labeled for irrigation purposes, the substance is not harmful to human health or the environment. Second, it is necessary because of the absence of wholly natural substitute products. And third, it is consistent with organic farming. This amendment follows the NOSB recommendation according to the procedures established in the OFPA (7 U.S.C. 6517(d)).

Comments Received and AMS's Response

AMS received two comments in response to the proposed listing of potassium hypochlorite. The subjects of these comments and responses from AMS are covered in this section. AMS is changing the final listing of potassium hypochlorite in response to one of these comments and to better clarify its use in organic crop production.

Unintentional use allowance. One commenter expressed concern that the annotation, as proposed, would allow additional uses outside those petitioned and recommended by the NOSB. Some additional uses identified are boot sanitizers, tool sanitation, cleaning of planting trays and pots, and reduction of biofilms.

AMS did not intend for additional allowances beyond managing irrigation water and equipment. To address this, AMS is finalizing the addition of potassium hypochlorite as the NOSB originally proposed. The finalized annotation will read ''for use in water for irrigation purposes.''

Not eligible for addition. One commenter asserted that potassium hypochlorite does not meet the criteria outlined in OFPA for the addition of a synthetic substance to the National List. The comment states the addition of potassium hypochlorite poses adverse impacts on human health and the environment, is not essential in organic production, and is incompatible with organic production.

NOSB must consider the above criteria when evaluating substances for inclusion on the National List (7 U.S.C. 6518(m)). NOSB considered and discussed these criteria during their Fall 2019 meeting [4] and in their formal recommendation for rulemaking.[5] AMS must also consider similar criteria when adding synthetic substances to the National List, which AMS discussed in the proposed rule preceding this action (86 FR 15800). Both reviews by NOSB and AMS determined potassium hypochlorite meets the criteria for National List addition as described in the sections NOSB REVIEW AND RECOMMENDATION and AMS REVIEW.

Fatty Alcohols (§ 205.601)

This final rule amends the National List to add fatty alcohols (C_6, C_8, C_{10}, and/or C_{12}) to § 205.601(k) as a synthetic substance allowed for use as sucker (secondary stems) control in organic tobacco production. The fatty alcohol designations C_6, C_8, C_{10}, and C_{12} correspond to 1-hexanol, 1-octanol, 1-decanol, and 1-dodecanol.

Fatty alcohols can be derived from fats or oils (most commonly coconut oil, palm kernel oil, lard, tallow, rapeseed oil, soybean oil, and corn oil) or from petroleum products. Applying fatty alcohols to tobacco plants, generally in the presence of a surfactant, selectively kills or inhibits sucker growth. Fatty alcohols are necessary to provide a safer and effective method of de-suckering tobacco plants. Without an allowance for fatty alcohols, farmers would need to rely on manual sucker removal, which would potentially expose workers to nicotine poisoning.[6] Removal of suckers facilitates growth of the harvestable leaves, reduces pest pressure, and increases crop yield.

NOSB Review and Recommendation

Following receipt of a petition in December 2018,[7] the NOSB recommended adding fatty alcohols to the National List in October 2019.[8] In the NOSB's evaluation of fatty alcohols, the NOSB considered comments from the public, a previously commissioned technical report,[9] and the petition itself. The NOSB discussed this petition in subcommittee calls and at its public meeting in October 2019.[10]

After their evaluation, the NOSB concluded that adding fatty alcohols to the National List is consistent with the evaluation criteria in the OFPA (7 U.S.C. 6518(m)). The NOSB found that use of fatty alcohols for sucker removal is essential for organic crop production, providing a tool to effectively inhibit sucker growth without exposing workers to the potential health impacts associated with manual desuckering. Additionally, the NOSB acknowledged fatty alcohols readily break down in the environment.

AMS Review

AMS concluded that the addition of fatty alcohols to the National List is consistent with the requirements in the OFPA (7 U.S.C. 6517(c)). First, when used as labeled for desuckering purposes, the substance is not harmful to human health or the environment. Second, it is necessary because of the absence of wholly natural substitute products. And third, due to its natural source material and being easily

[2] ''Formal Recommendation from National Organic Standards Board (NOSB) to the National Organic Program (NOP),'' Potassium Hypochlorite, October 25, 2019, *https://www.ams.usda.gov/sites/default/files/media/CSPotassiumHypochlorite.pdf.*

[3] Written and oral public comments submitted for the Fall 2019 NOSB Meeting are available at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-pittsburgh-pa.*

[4] ''National Organic Standards Board Meeting—Pittsburgh, PA,'' USDA, Agricultural Marketing Service, *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-pittsburgh-pa.*

[5] ''Formal Recommendation from National Organic Standards Board (NOSB) to the National Organic Program (NOP),'' Potassium Hypochlorite, October 25, 2019, *https://www.ams.usda.gov/sites/default/files/media/CSPotassiumHypochlorite.pdf.*

[6] ''Green Tobacco Sickness,'' U.S. Department of Labor, Occupational Safety and Health Administration, *https://www.osha.gov/green-tobacco-sickness.*

[7] ''Fatty Alcohols for use on Organic Tobacco Crops,'' National List Petition or Petition Update, USDA, Agricultural Marketing Service, *https://www.ams.usda.gov/sites/default/files/media/RevisedPetitionNaturalFattyAlcoholsforUseonOrganicTobaccoCrops.pdf.*

[8] ''Formal Recommendation from National Organic Standards Board (NOSB) to the National Organic Program (NOP),'' Fatty Alcohols, October 25, 2019, *https://www.ams.usda.gov/sites/default/files/media/CSFattyAlcoholsFinalRec_0.pdf.*

[9] ''Fatty Alcohols (Octanol and Decanol),'' Crops, Technical Report, August 1, 2016, *https://www.ams.usda.gov/sites/default/files/media/FattyAlcohols020217.pdf.*

[10] Written and oral public comments submitted for the Fall 2019 NOSB meeting are available at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-pittsburgh-pa.*

biodegradable, it is consistent with organic farming. This amendment follows the NOSB recommendation according to the procedures established in the OFPA (7 U.S.C. 6517(d)).

Comments Received and AMS's Response

AMS received four comments in response to the proposed listing of fatty alcohols for sucker control. The subjects of these comments and responses from AMS are covered in this section.

Inconsistent with organic production. One commenter opposed the addition of fatty alcohols to the National List. The comment stated that fatty alcohols pose health and environmental hazards, are not needed, and are inconsistent with organic production.

In support of these claims, the comment cited several sections of the technical report on fatty alcohols. The comment stated that longer-chain fatty alcohols resist hydrolysis and may bioaccumulate and are toxic to aquatic organisms. The comment also quoted sections of the technical report referring to potential sublethal effects on Lepidopteran species. The comment offered an alternative to fatty alcohols—indoleacetic acid—for desuckering. Lastly, the comment asserted that fatty alcohols do not fall into any OFPA categories at 7 U.S.C. 6517(c)(1)(B)(i).

AMS believes the information cited from the technical report was either misunderstood or misquoted. First, while the technical report does state that longer fatty alcohol chains are not expected to hydrolyze readily, the report defines these as having a carbon chain longer than 12.[11] As this allowance is limited to fatty alcohols of carbon chain length 6, 8, 10, and 12, accumulation is not expected to occur. Second, the report does state the potential for sublethal effects on Lepidopteran species. Dodecanol (C_{12} fatty alcohol) is used in U.S. Environmental Protection Agency (EPA) registered products as a mating disruption pheromone.[12] However, concentrations of dodecanol in mating disruption products (approximately 30%) are much higher than those in products for sucker control (less than 1%).[13] Given the much lower concentration of fatty alcohols, limited use of fatty alcohols for sucker control, and quick decomposition of these substances, AMS does not expect this use of fatty alcohols will have a measurable effect on Lepidopterans.

The comment also stated fatty alcohols do not fit into an OFPA category at 7 U.S.C. 6517(c)(1)(B)(i). AMS acknowledges that the NOSB did not identify an OFPA category for these substances. AMS views the limited use allowance of fatty alcohols to fall under the OFPA category of ''production aid,'' as identified in the petition. Desuckering is necessary plant maintenance in tobacco production to facilitate growth of the harvestable leaves, reduce pest pressure, and increase crop yield. This narrow use allowance of fatty alcohols aids in the production of organic tobacco by allowing farmers to perform this necessary maintenance task without risk to worker health.

Finally, the comment offered the alternative substance, indoleacetic acid (listed as indole-3-acetic acid by the EPA). While indoleacetic acid may be naturally occurring, it appears the common method of production is a synthetic process that would not be permitted in organic production.

General support. Two comments supported the addition of fatty alcohols to the National List. One commenter certifies many tobacco farms and stated many of their tobacco operations indicated that fatty alcohols are critical to the success of their organic farms. Another certifying agent commented they also certify several tobacco farmers, one of which already requested approval of fatty alcohols for sucker control.

In addition to mentioning the support of certified operations, these comments also indicate the proposed listing is clear and likely will not cause confusion. An additional comment offered general support for the review process and an acknowledgement of the NOSB's robust deliberative process of this substance.

AMS appreciates public engagement in the rulemaking process and agrees with the general support noted above, which mirrors the recommendation by the NOSB. AMS is moving forward with adding this substance to the National List as proposed.

Dairy Cultures (§ 205.605)

This final rule amends the National List to remove dairy cultures from § 205.605(a) as a nonsynthetic substance allowed for use in organic processed products. This removal is not expected to affect any currently allowed or future products. Any cultures allowed under this listing will continue to be allowed under the listing for microorganisms at § 205.605(a).

NOSB Review and Recommendation

Following the sunset review of dairy cultures, the NOSB recommended removing dairy cultures from the National List. As described in the BACKGROUND section, the sunset process is a system of regular evaluation of National List substances against criteria in the OFPA. If a substance is found to no longer satisfy these criteria, the NOSB may recommend removal of the substance.

In its recommendation, the NOSB stated the listing for dairy cultures was no longer needed, concluding that the allowance of microorganisms at § 205.605(a) provides an alternative to the dairy cultures listing. This recommendation acknowledged the widespread use of dairy cultures and NOSB meeting participants' comments, which confirmed that the removal of the dairy cultures listing will not affect their allowance.

Comments Received and AMS's Response

Opposition. One commenter opposed the removal of dairy cultures from the National List, citing three reasons to maintain the listing. First, the commenter stated the removal of dairy cultures may cause consumer confusion. The comment stated there is potential for reduced transparency without a clear connection between ''dairy cultures'' as listed on product labels and the ''microorganisms'' listing on the National List. Second, the comment identified the unique application of dairy cultures. While the comment acknowledges dairy cultures are a subset of microorganisms, it also stated a preference to maintain the listing to assist any future annotation. Finally, the comment questioned whether sunset review is the appropriate time for this removal. The comment stated this action should be the result of a petition or a separate recommendation track, not the product of a sunset review.

AMS does not believe removing the ''dairy cultures'' listing will result in widespread confusion or reduced transparency. While AMS acknowledges a preference to have ingredient declarations exactly match the National List allowance, many substances on the National List are known by multiple names, not all of which are listed. If widespread confusion occurs, AMS

[11] ''Fatty Alcohols (Octanol and Decanol),'' Crops, Technical Report, August 1, 2016, Technical Report, lines 303–305, August 1, 2016, *https://www.ams.usda.gov/sites/default/files/media/FattyAlcohols020217.pdf.*

[12] U.S. Environmental Protection Agency, February 3, 2014, *https://www3.epa.gov/pesticides/chem_search/ppls/053575-00006-20140203.pdf.*

[13] ''Fatty Alcohols (Octanol and Decanol),'' Crops, Technical Report, August 1, 2016, Technical Report, table 1, August 1, 2016, *https://www.ams.usda.gov/sites/default/files/media/FattyAlcohols020217.pdf.*

would prefer to address the confusion through education rather than expanding the National List to include all possible ingredient names.

AMS acknowledges the desire to keep dairy cultures for sake of flexibility. Regardless of whether dairy cultures remain on the list, any recommended annotation would need to come from the NOSB and go through the rulemaking process. As such, there is no added flexibility or resource savings in maintaining the listing; the process to add dairy cultures with an annotation is similar in time and resources to only adding the annotation. Lastly, AMS does not believe this action is inappropriate for the sunset process, which is intended to regularly evaluate National List substances against the criteria in OFPA at 7 U.S.C. 6518(m). One of these criteria is ''alternatives to using the substance in terms of practices or other available materials.'' The NOSB's sunset review determined that there are other available materials (microorganisms), rendering this listing unnecessary.

Several other comments were neutral (neither in support of nor in opposition to the removal of the dairy cultures listing). One comment requested further examination of the allowed fermentation processes of microorganisms in general.

AMS appreciates public engagement in the rulemaking process. AMS is moving forward with removing this listing from the National List as proposed.

III. Related Documents

AMS published notices in the **Federal Register** announcing the Spring 2019 NOSB Meeting (83 FR 60373, November 26, 2018) and announcing the Fall 2019 NOSB meeting (84 FR 23522). These notices invited public comments on the NOSB recommendations addressed in this final rule. The AMS proposed rule that preceded this final rule was published on March 25, 2021 (86 FR 15800).

IV. Statutory and Regulatory Authority

OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. The OFPA authorizes the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List (7 U.S.C. 6518(k) and (n)). Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List and directs petitioners to obtain the petition procedures from USDA (7 CFR 205.607). The current petition procedures published in the **Federal Register** (81 FR 12680, March 10, 2016) for amending the National List can be accessed through the NOP Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

A. Executive Order 12866 and Regulatory Flexibility Act

This proposed rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those Orders.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses.[14] The SBA classifies small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $1,000,000 (13 CFR 121.201). Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector ''all other professional, scientific, and technical services.'' For this category, the small business threshold is average annual receipts of less than $16.5 million.

Producers. AMS has considered the economic impact of this final rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the United States would be considered small entities. According to the 2017 Census of Agriculture, 16,585 organic farms in the United States reported sales of organic products and total farmgate sales more than $9.9 billion.[15] Based on that data, organic sales average just under $600,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $1,000,000 sales threshold to qualify as a small business.

Handlers. According to the NOP's Organic Integrity Database (OID), there are 10,971 U.S.-based organic handlers that are certified under the USDA organic regulations.[16] The Organic Trade Association's 2020 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: fewer than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

Certifying agents. The SBA defines ''all other professional, scientific, and technical services,'' which include certifying agents, as those having annual receipts of less than $16,500,000 (13 CFR 121.201). There are currently 76 USDA-accredited certifying agents, based on a query of the OID database, who provide organic certification services to producers and handlers. While many certifying agents are small entities that would be affected by this final rule, we do not expect that these certifying agents would incur significant costs as a result of this action as certifying agents already must comply with the current regulations (*e.g.,* maintaining certification records for organic operations).

[14] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' U.S. Small Business Administration, August 19, 2019, *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

[15] ''2019 Organic Survey,'' 2017 Census of Agriculture, USDA National Agricultural Statistics Service, table 1, *https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf.*

[16] Organic Integrity Database, USDA, accessed October 27, 2021, *https://organic.ams.usda.gov/Integrity.*

AMS does not expect the economic impact on entities affected by this rule to be significant. The effect of this final rule will allow the use of two additional substances in organic crop production and remove a redundant listing for one substance in organic handling. Adding two substances to the National List will increase regulatory flexibility and provide small entities with more options to use in day-to-day operations. Removal of the substance in organic handling will have no impact as its use will continue to be allowed under another National List allowance.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to the USDA to be accredited as a certifying agent, as described in the OFPA (7 U.S.C. 6514(b)). States are also preempted from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA (7 U.S.C. 6503–6507).

Pursuant to the OFPA (7 U.S.C. 6507(b)(2)), a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must: (a) Further the purposes of OFPA; (b) not be inconsistent with OFPA; (c) not be discriminatory toward agricultural commodities organically produced in other States; and (d) not be effective until approved by the Secretary.

In addition, pursuant to 7 U.S.C. 6519(c)(6), this final rule does not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056) concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, Office of Management and Budget (OMB) clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes.

AMS has assessed the impact of this final rule on Indian Tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders when matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations are shared during these quarterly calls, and tribal leaders have the opportunity to comment on the proposed changes.

E. Congressional Review Act

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

F. General Notice of Public Rulemaking

This final rule reflects recommendations submitted by the NOSB to the Secretary to add two substances to the National List and remove one substance from the National List.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Livestock, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, AMS amends 7 CFR part 205 as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

■ 2. Amend § 205.601 by:
■ a. Revising paragraph (a)(2)(iv);
■ b. Adding paragraph (a)(2)(v);
■ c. Revising paragraph (k);

The revisions and addition read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(a) * * *

(2) * * *

(iv) Potassium hypochlorite—for use in water for irrigation purposes.

(v) Sodium hypochlorite.

* * * * *

(k) As plant growth regulators.

(1) Ethylene gas—for regulation of pineapple flowering.

(2) Fatty alcohols (C6, C8, C10, and/or C12)—for sucker control in organic tobacco production.

* * * * *

§ 205.605 [Amended]

■ 3. In § 205.605, amend paragraph (a) by removing the words ''Dairy cultures''.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–05870 Filed 3–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–TP–0028]

RIN 1904–AE03

Energy Conservation Program: Test Procedures for Water Closets and Urinals

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the test procedures for water closets and

urinals to reference the most recent update to the relevant industry standard, American Society of Mechanical Engineers (''ASME'') Standard A112.19.2–2018. In this final rule, the Department of Energy (''DOE'') is also amending certain definitions and adding definitions for certain terms that are currently used in the Federal test procedures but are not defined.

DATES: The effective date of this rule is April 22, 2022. The final rule changes will be mandatory for product testing starting September 19, 2022. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of April 22, 2022.

ADDRESSES: The docket, which includes **Federal Register** documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-TP-0028.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standard into part 430:

ASME A112.19.2–2018/CSA B45.1–18, ''Ceramic plumbing fixtures,'' July 2018 (including Errata—October 2018) (''ASME A112.19.2–2018'').

Copies of ASME A112.19.2–2018 can be obtained from American Society of Mechanical Engineers at Three Park Avenue, New York, NY 10016–5990, 1–800 843–2763, or by going to *www.asme.org.*

For a further discussion of this standard, see section IV.N of this document.

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I. Authority and Background

Water closets and urinals are included in the list of ''covered products'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(17) and (18)) DOE's energy conservation standards and test procedures for water closets and urinals are currently prescribed at title 10 Code of Federal Regulations (''CFR'') 430.23(u) and (v), respectively, and 10 CFR part 430, subpart B, appendix T (''appendix T''). The following sections discuss DOE's authority to establish test procedures for water closets and urinals and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency and water use. These products include water closets and urinals, the subject of this document. (42 U.S.C. 6292(a)(17) and (18))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards [3] (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy and water conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] The term ''energy conservation standard'' includes water use standards for showerheads, faucets, water closets and urinals. (42 U.S.C. 6291(6)(A))

test procedures for covered products. First, EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use water use (for plumbing products such as water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use. (42 U.S.C. 6293(b)(3)) Second, any test procedure shall not be unduly burdensome to conduct.

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including water closets and urinals, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect water use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy or water use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

EPCA also directs that the test procedures for water closets and urinals are to be the test procedures specified in American Society of Mechanical Engineers (''ASME'') A112.19.6—1990, ''Hydraulic Requirements for Water Closets and Urinals'' (''ASME A112.19.6–1990''). (42 U.S.C. 6293(b)(8)(A)) EPCA further directs that, if the requirements of ASME A112.19.6–1990 are revised at any time and approved by the American National Standards Institute (''ANSI''), DOE must amend the Federal test procedures to conform to the revised ASME/ANSI standard, unless DOE determines by rule that to do so would not meet the requirements of EPCA that the test procedures be reasonably designed to produce test results which measure water use during a representative average use cycle as determined by DOE, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(8)(B)) If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

DOE is publishing this final rule in satisfaction of these requirements under EPCA. (42 U.S.C. 6293(b)(1)(A) and (b)(8)(B))

B. Background

DOE's test procedures for water closets and urinals are found in 10 CFR 430.23(u) and (v), respectively, and appendix T.

On May 20, 2021, DOE published a notice of proposed rulemaking (''NOPR'') presenting DOE's proposals to amend the water closets and urinals test procedures (''May 2021 NOPR''). 86 FR 27281. DOE held a public meeting related to this NOPR on June 16, 2021.

DOE received comments in response to the May 2021 NOPR from the interested parties listed in Table I.1.[4]

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO MAY 2021 NOPR

Commenter	Referenced in this NOPR	Categorization
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, the California Investor-Owned Utilities).	CA IOUs	Utility Companies.
Natural Resources Defense Council, Appliance Standards Awareness Project	NRDC and ASAP	Efficiency Advocacy Organizations.
Plumbing Manufacturers International	PMI	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

II. Synopsis of the Final Rule

In this final rule, DOE amends 10 CFR 430.2 (Definitions), 10 CFR 430.3 (Materials Incorporated by Reference), and appendix T as follows:

(1) Incorporate by reference ASME A112.19.2–2018, ''Ceramic plumbing fixtures,'' with additional clarifying edits in appendix T;

(2) Replace the current term ''toilet'' with ''water closet;'' ''blowout toilet'' and ''blowout water closet'' with ''blowout bowl water closet;'' ''gravity tank-type toilet'' with ''gravity flush tank water closet;'' and ''siphonic water closet'' with ''siphonic bowl water closet;'' and

(3) Add terms and corresponding definitions for ''blowout bowl,'' ''blowout action,'' ''gravity flush tank water closet,'' ''siphonic action,'' ''siphonic bowl,'' and ''trough-type urinal.''

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURES

DOE test procedures	Amended test procedures	Reason for the change
Incorporates the 2008 version of ASME A112.19.2 for measurement of water consumption.	Incorporates the 2018 version of ASME A112.19.2, with additional clarifying edits to appendix T.	Industry TP update to ASME A112.19.2–2018.

[4] DOE also received one anonymous comment that stated the following: ''I think it's a good idea,'' which is not presented in the Table I.1.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for water closets and urinals. (Docket No. EERE–2017–BT–TP–0028, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURES—Continued

DOE test procedures	Amended test procedures	Reason for the change
Refers to both ''toilet'' and ''water closet'' but only defines ''water closet''.	Replaces ''toilet'' with ''water closet''	Harmonizes terms and definitions with ASME A112.19.2–2018.
Defines and refers to and the term ''blowout toilet''.	Defines the term ''blowout bowl,'' and refers to the term ''blowout bowl water closet'' in lieu of ''blowout toilet'' and ''blowout water closet.'' Additionally, defines the term ''blowout action,'' which is included within the definition of ''blowout bowl''.	Harmonizes terms and definitions with ASME A112.19.2–2018.
Refers to the terms ''gravity flush tank water closet'' and ''siphonic bowl,'' but does not define either term.	Defines the terms ''gravity flush tank water closet'' and ''siphonic bowl.'' Refers to the term ''gravity flush tank water closet'' in lieu of ''gravity flush tank-type toilet.'' Refers to the term ''siphonic bowl water closet'' in lieu of ''siphonic water closet.'' Additionally, defines the term ''siphonic action,'' which is included within the definition of ''siphonic bowl''.	Harmonizes definitions with ASME A112.19.2–2018.
Refers to the term ''trough-type urinal,'' but does not define it.	Defines the term ''trough-type urinal''	Harmonizes the definition of the term with stakeholder recognized definition.

DOE has determined that the amendments described in section III and adopted in this document will not alter the measured water use of water closets and urinals, or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of water use or efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope of Applicability

This final rule applies to both water closets and urinals, as defined in 10 CFR 430.2. DOE defines a ''water closet'' as a plumbing fixture that has a water-containing receptor that receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons. 10 CFR 430.2. DOE defines a ''urinal'' as a plumbing fixture that receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installations in prisons. *Id.*

B. Updates to Industry Test Standards

DOE's test procedures for water closets and urinals in appendix T incorporate by reference ASME A112.19.2–2008,[6] sections 7.1, 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.1.5, 7.4, 8.2, 8.2.1, 8.2.2, 8.2.3, 8.6, 8.6.4, Table 5 and Table 6. These sections and tables provide procedures for testing and measuring water consumption, specifications for test apparatus, and other general requirements for the testing of water closets and urinals.

ASME A112.19.2–2018, the current version of the industry test standard, amends pertinent sections of the 2008 version incorporated into 10 CFR part 430. These amendments include (1) editorial changes and clarification in sections 7.1.2, 7.3.2,[7] 8.6.4, and Figure 12; [8] (2) a correction in section 8.2.1 to the water consumption static test pressure value for urinals to reflect the corresponding value in Table 6; and (3) additions to Table 5 that are not relevant to the water consumption test for water closets. In the May 2021 NOPR, DOE had tentatively determined that the amendments would not impact the measured values of water use for water closets and urinals under appendix T, the representativeness of the results, or the test burden. Accordingly, DOE proposed to incorporate by reference ASME A112.19.2–2018 and requested comment. 86 FR 27281, 27284.

The CA IOUs and PMI recommended that DOE incorporate the latest version of the industry test standard, ASME A112.19.2–2018. (CA IOUs, No. 11 at p. 2; PMI, No. 13 at p. 1) DOE did not receive any other comments regarding the industry standard update. For the reasons discussed in the May 2021 NOPR and presented in the preceding paragraphs, in this final rule DOE incorporates by reference the latest industry test standard, ASME A112.19.2–2018.

DOE also proposed in the May 2021 NOPR to remove references to Sections 7.1 and 8.2 of ASME A112.19.2–2018 in appendix T because those sections were superfluous and did not provide specifications needed for performing the DOE test procedures. DOE requested comments on the proposal. 86 FR 27281, 27284–27285. DOE did not receive any comments on this proposal. DOE removes these superfluous references in this final rule as proposed in the May 2021 NOPR.

C. Definitions

Several terms and definitions in ASME A112.19.2–2018 relevant to water closets and urinals vary from those in DOE regulations, including terms not defined in 10 CFR 430.2. In the May 2021 NOPR, DOE proposed amendments to a number of definitions, which are presented in Table III.1, and requested comment on the proposed definitions. 86 FR 27281, 27285–27287.

[6] This reference includes Update No. 1, dated August 2009, and Update No. 2, dated March 2011.

[7] The water consumption test is in Section 7.4 in ASME A112.19.2–2008, but Section 7.3 in ASME A112.19.2–2018.

[8] While Figure 12 is not incorporated by reference in 10 CFR 430.3(h)(2), Figure 12 is referenced within section 7.1.1, which is incorporated by reference.

TABLE III.1—WATER CLOSETS AND URINALS: TERMS AND DEFINITIONS

Term	Usage in appendix T, 10 CFR 430.32(q) or 10 CFR 430.32(r)	DOE definition (10 CFR 430.2)	ASME definition (A112.19.2–2018)	DOE's proposal
Toilet	10 CFR 430.32(q)	None	None	Replace term with ''water closet.''
Electromechanical hydraulic toilet.	10 CFR 430.32(q)	A water closet that utilizes electrically operated devices such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet.	None	Replace term with ''electromechanical hydraulic water closet'' while maintaining existing definition.
Electro-hydraulic water closet.	Not used	None	A water closet with a nonmechanical trap seal incorporating an electric motor and controller to facilitate flushing.	No update.
Blowout bowl	appendix T	None	A non-siphonic water closet bowl with an integral flushing rim, a trap at the rear of the bowl, and a visible or concealed jet that operates with a blowout action.	Adopt ASME A112.19.2–2018 definition.
Blowout action	Not used	None	A means of flushing a water closet whereby a jet of water directed at the bowl outlet opening pushes the bowl contents into the upleg, over the weir, and into the gravity drainage system.	Adopt ASME A112.19.2–2018 definition.
Blowout toilet	10 CFR 430.32(q)	A water closet that uses a non-siphonic bowl with an integral flushing rim, a trap at the rear of the bowl, and a visible or concealed jet that operates with a blowout action.	None	Replace term with ''blowout bowl water closet.''
Blowout water closet.	appendix T	None	None	Replace term with ''blowout bowl water closet.''
Gravity flush tank water closet.	appendix T	None	A water closet designed to flush the bowl with water supplied by gravity only.	Adopt ASME A112.19.2–2018 definition.
Gravity tank-type toilet.	10 CFR 430.32(q)	None	None	Replace term with ''gravity flush tank water closet.''
Siphonic bowl	appendix T	None	A water closet bowl that has an integral flushing rim, a trap at the front or rear, and a floor or wall outlet, and operated with a siphonic action (with or without a jet).	Adopt ASME A112.19.2–2018 definition.
Siphonic action	Not used	None	The movement of water through a flushing fixture by creating a siphon to remove waste material.	Adopt ASME A112.19.2–2018 definition.
Siphonic water closet.	appendix T	None	None	Replace term with ''siphonic bowl water closet.''
Trough-type urinal	10 CFR 430.32(r)	None	None	Adopt California's regulatory definition (''a urinal designed for simultaneous use by two or more persons.'')

In response to the May 2021 NOPR, the CA IOUs expressed support for the proposed definitions. (CA IOUs, No. 11 at p. 1) DOE did not receive any other comments on the proposed terms and definitions. In this final rule, DOE incorporates the terms and definitions as proposed in the May 2021 NOPR. DOE has determined that the amendments to the terms and definitions adopted in this final rule provide greater consistency with the referenced industry standard and avoid potential confusion in the use of the terms.

D. Test Pressure

Sections 3.a.(ii) and 3.b of appendix T require water closets and urinals to be tested at various test pressures, as

specified in Table III.2. Sections 3.a.(ii) and 3.b of appendix T also requires that a test be performed three times at each required pressure. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at all test pressures.

TABLE III.2—REQUIRED TEST PRESSURES IN APPENDIX T

Product configuration	Test pressures (pounds per square inch (''psi''))
Flushometer valve water closets with siphonic bowl	35, 80
Flushometer valve water closets with a blowout bowl	45, 80
Tank-type water closets	20, 50, 80
Urinals	25, 80

In the May 2021 NOPR, DOE proposed to maintain the water pressure and averaging requirements in appendix T, consistent with the industry test standard requirements. 86 FR 27281, 27285, 27288.

NRDC and ASAP commented that averaging the high and low water pressure may not make the test procedure representative of installations in higher pressure locations. They cited water loss audit reports in Pennsylvania [9] and New Jersey [10] showing that both states reported a minimum system pressure of 40 psi; a median system pressure of 75 and 58 psi, respectively; a 90th percentile system pressure of 100 and 82 psi, respectively; and a maximum system pressure of 150 and 140 psi, respectively. NRDC and ASAP asserted that since no system in either state reported an average system pressure of less than 40 psi, giving equal weight to results of the tests conducted at 20, 25, or 35 psi with test results conducted at 80 psi could not possibly provide a representation of most real-world conditions. NRDC and ASAP further cited data compiled by the American Water Works Association, showing data from California, Georgia, and Quebec, which reported higher system water pressures than the DOE test procedures.[11] They argued that to the extent that the operation of some flushometer valves is significantly impacted by water line pressure at the point of installation, a higher pressure contributes to higher water consumption, and asserted that the averaging of high and low test pressure results may mask non-compliance by water closets and urinals when installed at higher pressure locations. NRDC and ASAP recommended that DOE require that the test results at each test pressure be subject to the maximum flush volume of the standard, rather than averaging water consumption across all test pressures to determine compliance with the standard. NRDC and ASAP asserted that since such a change would be a revision in the calculation of test data, it would therefore not impose any additional testing burden on manufacturers. (NRDC and ASAP, No. 12 at pp. 3–5)

PMI commented that DOE's current test method of averaging results at different test pressure should remain unchanged. PMI stated that the requirements are consistent with the industry standards, and that any deviations from these requirements could result in an unnecessary cost burden to manufacturers. (PMI, No. 12 at p. 1)

DOE carefully reviewed the data provided by NRDC and ASAP. DOE notes that the water pressures identified in the datasets provided are system pressures (*i.e.,* pressure at the utility), and not the pressures at the point of installation, where water closets and urinals are connected. The water pressure within the system lines may not correspond to the water pressure at the point of installation of products within a building, as explained in the following paragraphs. As such, the range of system pressures presented is not directly relevant to appropriate test pressure for water closets and urinals.

DOE does not have data and is not aware of national level data regarding the range of water pressures at point of product installation. However, the range of pressures specified in the DOE test procedures (*i.e.,* 20 psi minimum to 80 psi maximum) represent the range of pressures expected to be experienced at the point of product installation, for the reasons that follow. In locations at which the system pressure is greater than 80 psi, pressure reducing valves would likely be used to prevent damage to customer plumbing, hot water heaters, and other customer devices.[12] This supports using 80 psi as the maximum test pressure required for appendix T, absent point-of-installation data. Relevant to the defining minimum test pressures, DOE notes that water pressure within a building may vary based on location of installation (*i.e.,* water pressure typically decreases at upper building levels). Additionally, water pressure may fluctuate based on water demand within a building at the time of use (*e.g.,* multiple water consuming appliances being operated at the same time).

Both the Pennsylvania and New Jersey reports discuss that the ''Ten State Standards'' [13] stipulate that water systems ''shall be designed to maintain a minimum pressure of 20 psi at ground level at all points in the distribution system under all conditions of flow.'' This supports using 20 psi as the minimum test pressure required for appendix T (for tank-type water closets), absent point-of-installation data.

EPCA requires that the test procedures for water closets and urinals be reasonably designed to produce test results which reflect water use during a representative average use cycle. (42 U.S.C. 6293(b)(3)) As discussed, the water pressure at point of installation of water closet or urinal may vary from location to location and may also vary at a given location depending on competing water demands at the time of operation. Commenters' suggestion to require compliance at each test pressure would effectively result in test measurements representative of operation at the upper and lower ends of the range of pressures expected in the field, rather than reflecting representative average performance across the range of varying water pressures. Moreover, commenters' suggestion would effectively result in a water closet or urinal basic model being subject to more than one standard, without clear statutory authorization for more than one standard for this product. (See 42 U.S.C. 6292(6)(a)). Therefore, in this final rule, DOE is maintaining the current test pressures and the requirement to average flush volume across test pressures.

In the May 2021 NOPR, DOE also proposed to remove the static pressure requirements for flushometer valve

[9] Kunkel Water Efficiency Consulting. 2017. Report on the Evaluation of Water Audit Data for Pennsylvania Water Utilities. *www.nrdc.org/resources/report-evaluation-water-audit-data-pennsylvania-water-utilities.*

[10] Kunkel Water Efficiency Consulting. 2017. Report on the Evaluation of Water Audit Data for New Jersey Water Utilities. *www.nrdc.org/sites/default/files/nj-utilities-water-audit-data-evaluation-20170110.pdf.*

[11] Water Audit Reference dataset (''WARD'') summary data is accessible at *www.awwa.org/Resources-Tools/Resource-Topics/Water-Loss-Control/Free-Water-Audit-Software.*

[12] Per the 2021 Uniform Plumbing Code (''UPC'')—which represents the most current approaches in the plumbing field, is developed under the American National Standards Institute (''ANSI'') Consensus process, and is designated as an American National Standard by ANSI—for water supply piping exceeding 80 psi, an ''approved-type pressure regulator preceded by an adequate strainer shall be installed and the static pressure reduced to 80 psi or less.''

[13] ''Water Supply Committee of the Great Lakes–Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers Recommended Standards for Water Works''.

water closets (with a siphonic bowl and blowout bowl) in section 3.a.(ii) of appendix T, and instead reference the static pressure requirement provided in Table 5 of ASME A112.19.2–2018. DOE noted that the static pressure was specified in appendix T only because ASME A112.19.2–2008 (the version of the standard incorporated by reference in appendix T) published incorrect static pressure requirements for flushometer valve water closets; however, this is now corrected in ASME A112.19.2–2018. Finally, in Section 3.b of appendix T, DOE proposed to replace the reference to Section 8.6.4 of ASME A112.19.2–2008 with Table 6 of ASME A112.19.2–2018 to directly reference the test pressures. DOE noted that while Section 8.6.4 references Table 6 for the required test pressures, Section 8.6.4 also provides performance specifications that are not relevant for the purpose of meeting DOE water use standards in 10 CFR 430.32(r). DOE requested comment on all the proposals. 86 FR 27281, 27285, 27288–27289. DOE did not receive any specific comments on these proposals. For the reasons discussed in this paragraph and in the May 2021 NOPR, DOE incorporates these edits in this final rule.

E. Additional Directions Regarding Recorded & Calculated Values

Appendix T provides additional direction regarding the resolution of the recorded values; rounding of recorded and calculated values; and test set-up as it relates to manufacturer installation instructions, which are not specified in the industry test standard, but needed for compliance purposes. In the May 2021 NOPR, DOE proposed to maintain the additional direction in appendix T. 86 FR 27281, 27289. In response, NRDC and ASAP agreed that the additional directions to the industry standard in appendix T need to be maintained. (NRDC and ASAP, No. 12 at p. 1) DOE continues to maintain the additional directions in this final rule.

DOE also received several comments in response to the May 2021 NOPR regarding the instrument resolution required by the ASME and DOE test procedures. NRDC and ASAP commented that the ASME standard requires an apparatus capable of reading increments not exceeding 0.07 gallons and this lets the results of each test run be rounded down to the nearest 0.07 gallons. NRDC and ASAP asserted that this allows results that may not be representative, or results that may mask differences in performance between models, and allows products to exceed the standard by 0.07 gallons per flush. They noted that the DOE certification reports require rounding to the nearest 0.01 gallons. Accordingly, NRDC and ASAP recommended that DOE increase the required resolution of the test procedure water use measurement to 0.01 gallons and require rounding the test results to the nearest 0.01 gallons. Alternatively, they commented that absent more precise measurement increments, DOE should consider increasing the number of repetitions at each pressure to five tests and require five models to be tested for each basic model. (Efficiency Advocates, No. 12 at pp. 1–3)

PMI opposed DOE implementing an instrument resolution of 0.01 gallons and urged DOE to maintain the current resolution specifications. PMI stated that changing the industry standard specification of rounding down to the nearest 0.07 gallon would cause some water closets that are currently compliant with standards to no longer be compliant. PMI stated that although the instruments and equipment have a resolution of 0.01 gallons and fall within the tolerances of calibration, fill valves on plumbing products are inexact and often have variations between flushes that are greater than 0.01 gallons. PMI stated that this is impacted by the water line and by manufacturing tolerances. PMI asserted that manufacturers need to be able to round down the total flush volume to the nearest 0.07 gallons to account for such factors. PMI stated that changing the current instrument resolution of 0.07 to a value of 0.01 to match the DOE reporting requirements would require manufacturers and test labs to provide additional investments in equipment and training, as well as the necessary re-testing and re-certification. PMI stated that it is unaware of any effort to subvert the water saving goals provided by the current test procedures, and that third party testing and certification requirements in Section 7.3 of ASME A112.19.2/CSA B45.1 adds additional layers of safeguards against such manipulation. (PMI, No. 13 at p. 2)

The rounding resolution in Sections 7.3.2 and 8.6.1 of ASME A112.19.2–2018 reflects the resolution specifications of the equipment required for use in the test procedures, including the receiving vessel, the load cell and other apparatus capable of measuring volumes (at 0.07 gallons, or 0.25 liters). As noted by PMI, although the instruments and equipment used in testing often have a resolution of 0.01 gallons, the larger tolerance at 0.07 gallons is to allow variations with inexact fill valves and manufacturing tolerances. Further, Section 7.3.3 and 8.6.2 of ASME A112.19.2–2018 requires that the tests be repeated three times at each of the test pressures. In addition, DOE sampling requirements for represented values of water consumption require that the minimum number of units tested shall be no fewer than two. *See* 10 CFR 429.30 and 10 CFR 429.31. As discussed in the May 2021 NOPR, a basic model must comply with the applicable energy conservation standard to be distributed in commerce. Individual test measurements may vary within the sample for a given basic model, but all of the measurement cannot systemically test more consumptive than the standard when certification testing is being conducted in order to obtain a valid representation. With no fewer than two sample units per basic model and three runs per unit, DOE believes the variation in the final represented value will be minimal.

Consistent with comments from PMI, DOE has no evidence to suggest that manufacturers are using rounding requirements as a means to exploit compliance with water conservation standards for these products. DOE expects that changes in equipment resolution and rounding requirements or any considerations to increase repetitions at each pressure would require currently certified water closets and urinals to be retested and recertified. Requiring improved resolution or more tests would create additional manufacturer burden without clear benefits, given the testing and sampling requirements discussed. For all the reasons presented, DOE is maintaining the current specifications in appendix T regarding measurement and rounding specifications.

F. Connected and Electronic Products

In response to the May 2021 NOPR, CA IOUs commented that they support DOE continuing to evaluate integrating connected (*i.e.,* Smart Technology) products. They also stated that in part due to the COVID–19 Pandemic, they expect more widespread adoption of electronic, hand-free flushing operations for water closets and urinals. As such, they are concerned that future demand may increase standby energy consumption in the future. They encouraged DOE to further evaluate touchless technology and sensors including ultrasonic, mechanical vibration-based approaches, and radio-frequency identification readers. However, CA IOUs commented that they do not believe the current test procedures impedes any advances in ''smart'' functionalities. (CA IOUs, No. 11 at p. 3) At this time, DOE is not making any changes to the test procedures to incorporate ''smart''

functionalities or electronic operation but will continue to evaluate any new technologies in future rulemakings.

G. Clarifications to 10 CFR 430.23 and Appendix T

In the May 2021 NOPR, DOE proposed to replace the language ''the maximum permissible water use allowed'' in 10 CFR 430.23(u) and 10 CFR 430.23(v) with ''the water use''. DOE noted that this amendment would clarify that the DOE test procedures measure water use, whereas the standards in 10 CFR 430.32(q) and (r) establish the maximum allowable water use for water closets and urinals, respectively. DOE requested comment on this proposal. 86 FR 27281, 27290. DOE did not receive any comments on this proposal. For the reasons discussed in the May 2021 NOPR, DOE incorporates these edits in this final rule.

In this final rule, DOE has also modified 10 CFR 430.23(q) to incorporate all water closet types and their maximum flush rates into one centralized table. The dates when each energy conservation standards are applicable are shown in the table. This section was updated for ease of reading and added clarity only. DOE notes that the energy conservation standards based on each water closet type remains unchanged with this update.

In this final rule, DOE has also added additional clarification in appendix T to describe that when measuring the flush volume at a given pressure, manufacturers are to average the individual flush volumes at a given pressure from the three tests. The final measured flush volume for each unit, is the average of the total flush volumes recorded at each test pressure. This update aligns with the industry standard and does not change current practices. The additions only provide clarity to the order of averaging tests when conducting the flush volume test for water closets and urinals. As such, DOE has adopted these clarifications in this final rule.

Lastly, in this final rule, DOE has made minor editorial changes to some of the language in appendix T to improve readability. This includes text consistent with ASME A112.19.2–2018 clarifying the sequence of averaging and converting the water closet standards from text into a chart substantively the same as the proposed regulatory text. These edits do not impact the results of the test procedure and as such, are adopted in this final rule.

H. Test Procedure Costs

In this final rule, DOE amends the test procedures for water closets and urinals to reference the most recent update to the relevant industry standard, ASME 112.19.2–2018. In addition, DOE is also amending certain definitions, and adding definitions for a number of terms which are currently used in the Federal test procedures but not defined. The adopted amendments are consistent with current industry standards, and therefore would not impact the measured values of water use for water closets and urinals under appendix T, assuming current industry practice is to follow those standards. In accordance with EPCA, DOE has determined that these adopted amendments will not be unduly burdensome for manufacturers to conduct. Further, DOE has determined that the adopted test procedure amendments will not impact testing costs already experienced by manufacturers.

I. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined this test procedure rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *energy.gov/gc/office-general-counsel*.

In the May 2021 NOPR, DOE tentatively concluded that the impacts of the test procedure amendments proposed in the NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an initial regulatory flexibility analysis (IRFA) was not warranted, and that DOE would transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review.

As stated, the amendments adopted in this final rule amend the test procedures for water closets and urinals, consistent with the most recent version of the referenced industry standard. In addition, DOE amends certain definitions, and adds definitions for the terms currently used in the Federal test procedures, but not currently defined. DOE has determined that the adopted test procedure amendments would not impact testing costs already experience by manufacturers.

The amendments adopted in this final rule would not have significant economic impact on small businesses. The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'').[14] DOE used three NAICS

[14] The size standards are listed by NAICS code and industry description and are available at:

codes to cover all potential products for this rulemaking: 327110 (pottery, ceramics, and plumbing fixture manufacturing); 326191 (plastics plumbing fixture manufacturing); 332999 (all other miscellaneous fabricated metal product manufacturing). The threshold for NAICS classification code 327110 (pottery, ceramics, and plumbing fixture manufacturing), which includes most urinals and water closets covered by this rulemaking, is 1,000 employees or fewer. The threshold for NAICS classification codes 326191 (plastics plumbing fixture manufacturing) and 332999 (all other miscellaneous fabricated metal product manufacturing) is 750 employees or fewer. Since NAICS classification code 327110 includes the majority of water closet and urinal manufacturing and DOE assumes that most, if not all, water closet and urinal manufacturers make at least some products covered by that NAICS classification code, DOE used the more conservative 1,000 employee threshold value for this regulatory flexibility analysis.

DOE collected data from DOE's compliance certification database to identify manufacturers of water closets and urinals.[15] DOE then consulted publicly-available data and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a ''small business'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified 19 small businesses that manufacture either water closets or urinals covered by the proposed test procedures. As noted previously, DOE concluded in the May 2021 NOPR that the proposed amendments to the test procedure would not have a ''significant economic impact on a substantial number of small entities'' because the amendments to the test procedure are largely updates to harmonize the DOE test procedure with the industry test procedure currently in use, and these updates will not increase the cost of testing nor require retesting and recertification of basic models.

For the same reasons discussed in the May 2021 NOPR, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of water closets and urinals must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including water closets and urinals. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for water closets and urinals. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

www.sba.gov/document/support--table-size-standards (Last accessed on December 1, 2021).

[15] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (Last accessed December 1, 2021).

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause 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), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel*. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for water closets and urinals adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: ASME A112.19.2–2018. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the test jointly published by the American Society of Mechanical Engineers (''ASME'') and the Canadian Standards Association (''CSA Group'') designated ASME A112.19.2–2018. ASME A112.19.2–2018 is an industry-accepted test procedure that measures water consumption for water closets and urinals, and is applicable to products sold in North America. Specifically, the test procedure codified by this final rule references various sections of ASME A112.19.2–2018 that address test setup, apparatus, test conduct, and calculations. These sections of ASME A112.19.2–2018 are Section 7.1.1 ''All tests,'' Section 7.1.2 ''Gravity flush tank water closets,'' Section 7.1.3 ''Flushometer tank, electro-hydraulic, or other pressurized flushing device water closets,'' Section 7.1.4 ''Flushometer valve water closets,'' Section 7.1.5 ''Procedures for standardizing the water supply system,'' Section 7.3 ''Water consumption test,'' Section 8.2.1, Section 8.2.2, and Section 8.2.3, Section 8.6 ''Water Consumption Test,'' Table 5 ''Static test pressures for water closets, kPa (psi),'' and Table 6 ''Static test pressures for urinals, kPa (psi).''

Copies of ASME A112.19.2–2018 may be purchased from the ASME at Three Park Avenue, New York, NY 10016, 1–800 843–2763, or by going to *https://www.asme.org/codes-standards/find-codes-standards/a112-19-2-csa-b45-1-ceramic-plumbing-fixtures?productKey=J0121TM1:J0121TM1*.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on March 17, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 18, 2022.

Treena V. Garrett

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends 10 CFR part 430 as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:
■ a. Adding in alphabetical order definitions for ''Blowout action'' and ''Blowout bowl'';
■ b. Removing the definition for ''Blowout toilet'';
■ c. Removing the definition of ''Electromechanical hydraulic toilet'' and adding in its place a definition for ''Electromechanical hydraulic water closet''; and
■ d. Adding in alphabetical order definitions for ''Gravity flush tank water closet'', ''Siphonic action'', ''Siphonic bowl'', and ''Trough-type urinal''.

The additions read as follows:

§ 430.2 Definitions.

* * * * *

Blowout action means a means of flushing a water closet whereby a jet of water directed at the bowl outlet opening pushes the bowl contents into the upleg, over the weir, and into the gravity drainage system.

Blowout bowl means a non-siphonic water closet bowl with an integral flushing rim, a trap at the rear of the bowl, and a visible or concealed jet that operates with a blowout action.

* * * * *

Electromechanical hydraulic water closet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

* * * * *

Gravity flush tank water closet means a water closet designed to flush the bowl with water supplied by gravity only.

* * * * *

Siphonic action means the movement of water through a flushing fixture by creating a siphon to remove waste material.

Siphonic bowl means a water closet bowl that has an integral flushing rim, a trap at the front or rear, and a floor or wall outlet, and operates with a siphonic action (with or without a jet).

* * * * *

Trough-type urinal means a urinal designed for simultaneous use by two or more people.

* * * * *

■ 3. Section 430.3 is amended by revising paragraph (a) and the introductory text to paragraph (h) and adding paragraph (h)(3) to read as follows:

§ 430.3 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the DOE and at the National Archives and Records Administration (NARA). Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/appliance-and-equipment-standards-program.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(h) *ASME.* American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016–5990, 1–800 843–2763, or go to *www.asme.org.*

* * * * *

(3) ASME A112.19.2–2018/CSA B45.1–18 (''ASME A112.19.2–2018''), ''Ceramic plumbing fixtures'', July 2018 (including Errata—October 2018); IBR approved for appendix T to subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraphs (u) and (v) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(u) *Water closets.* Measure the water use for water closets, expressed in gallons or liters per flush (gpf or Lpf), in accordance with section 3(a) of appendix T to this subpart.

(v) *Urinals.* Measure the water use for urinals, expressed in gallons or liters per flush (gpf or Lpf), in accordance with section 3(b) of appendix T to this subpart.

* * * * *

■ 5. Appendix T to subpart B of part 430 is revised to read as follows:

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

Note: After September 19, 2022, representations made with respect to the water consumption of water closets or urinals must fairly disclose the results of testing pursuant to this appendix.

On or after April 22, 2022 and prior to September 19, 2022 representations, including compliance certifications, made with respect to the water consumption of water closets or urinals must fairly disclose the results of testing pursuant to either this appendix or the appendix as it appeared at 10 CFR part 430, subpart B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2014. Representations made with respect to the water consumption of water closets or urinals tested within that range of time must fairly disclose the results of testing under the selected version. Given that after September 19, 2022 representations with respect to the water consumption of water closets and urinals must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for ASME A112.19.2–2018; however, only enumerated provisions of that document apply to this appendix, as follows. Treat precatory language in ASME A112.19.2–2018 as mandatory for the purpose of testing.

a. Section 7.1.1 ''All tests,'' including Figures 11 and 12, as specified in section 2.a of this appendix;

b. Section 7.1.2 ''Gravity flush tank water closets,'' as specified in section 2.a of this appendix;

c. Section 7.1.3 ''Flushometer tank, electro-hydraulic, or other pressurized flushing device water closets,'' as specified in section 2.a of this appendix;

d. Section 7.1.4 ''Flushometer valve water closets,'' as specified in section 2.a of this appendix;

e. Section 7.1.5 ''Procedures for standardizing the water supply system,'' including Figures 11 and 12, as specified in section 2.a of this appendix;

f. Section 7.3 ''Water consumption test,'' as specified in section 3.a of this appendix, except sections 7.3.4 and 7.3.5;

f. Section 8.2.1, including Figure 12, as specified in section 2.b of this appendix;

g. Section 8.2.2, as specified in section 2.b of this appendix;

h. Section 8.2.3, as specified in section 2.b of this appendix;

i. Section 8.6 ''Water Consumption Test,'' as specified in section 3.b of this appendix, except sections 8.6.3 and 8.6.4;

j. Table 5 ''Static test pressures for water closets, kPa (psi),'' as specified in sections 2.a and 3.a of this appendix; and

k. Table 6 ''Static test pressures for urinals, kPa (psi)'' as specified in sections 2.a and 3.a of this appendix.

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over ASME A112.19.2–2018.

1. Scope

This appendix sets forth the test requirements used to measure the hydraulic performances of water closets and urinals.

2. Test Apparatus and General Instructions

a. When testing a water closet, use the test apparatus and follow the instructions specified in Sections 7.1.1 (including Table 5), 7.1.2, 7.1.3, 7.1.4, and 7.1.5 of ASME A112.19.2–2018). The flushometer valve used in the water consumption test must represent the maximum design flush volume of the water closet. Record each measurement at the resolution of the test apparatus. Round each calculation of water consumption for each tested unit to the same number of significant digits as the previous step.

b. When testing a urinal, use the test apparatus and follow the instructions specified in Sections 8.2.1, 8.2.2, and 8.2.3 (including Table 6) of ASME A112.19.2–2018. The flushometer valve used in the water consumption test must represent the maximum design flush volume of the urinal. Record each measurement at the resolution of the test apparatus. Round each calculation of water consumption for each tested unit to the same number of significant digits as the previous step.

3. Test Measurement

a. Water closets:

(i) Measure the water flush volume for water closets, expressed in gallons per flush (gpf) or liters per flush (Lpf), in accordance with Section 7.3, Water Consumption Test, of ASME A112.19.2–2018. For dual-flush water closets, the measurement of the water flush volume shall be conducted separately for the full-flush and reduced-flush modes and in accordance with the test requirements specified Section 7.3, Water Consumption Test, of ASME A112.19.2–2018. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at each test pressure as specified in Table 5 ''Static test pressures for water closets, kPa (psi),'' of ASME A112.19.2–2018, based on the average of the individual flush volumes at a given pressure from the three tests.

(ii) Flush volume and tank trim component adjustments: For gravity flush tank water closets, set trim components that can be adjusted to cause an increase in flush volume, including (but not limited to) the flapper valve, fill valve, and tank water level, in accordance with the printed installation instructions supplied by the manufacturer with the unit. If the printed installation instructions for the model to be tested do not specify trim setting adjustments, adjust these trim components to the maximum water use setting so that the maximum flush volume is produced without causing the water closet to malfunction or leak. Set the water level in the tank to the maximum water line designated in the printed installation instructions supplied by the manufacturer or the designated water line on the tank itself, whichever is higher. If the printed installation instructions or the water closet tank do not indicate a water level, adjust the water level to 1±0.1 inches below the top of the overflow tube or, for gravity flush tank water closets that do not contain an overflow tube, 1±0.1 inches below the top rim of the water-containing vessel for each designated pressure specified in Table 5 of ASME A112.19.2–2018.

b. Urinals—Measure water flush volume for urinals, expressed in gallons per flush (gpf) or liters per flush (Lpf), in accordance with Section 8.6, Water Consumption Test, of ASME A112.19.2–2018. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at each test pressure as specified in Table 6 ''Static test pressures for urinals, kPa (psi),'' of ASME A112.19.2–2018, based on the average of the individual flush volumes at a given pressure from the three tests.

■ 6. Section 430.32 is amended by revising paragraph (q) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(q) *Water closets.* The maximum water use allowed in gallons per flush for any of the following water closets is as follows:

Water closet type	Maximum flush rate (gpf (Lpf))	
	Manufactured after January 1, 1994	Manufactured after January 1, 1997
(1) Gravity flush tank water closet	1.6 (6.0)	1.6 (6.0)
(2) Flushometer tank water closet	1.6 (6.0)	1.6 (6.0)
(3) Electromechanical hydraulic water closet	1.6 (6.0)	1.6 (6.0)
(4) Blowout bowl water closet	3.5 (13.2)	3.5 (13.2)
(5) Flushometer valve water closets, other than those with blowout bowls	.....	1.6 (6.0)

* * * * *

[FR Doc. 2022–06138 Filed 3–22–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–1076; Special Conditions No. 25–607A–SC]

Special Conditions: Dassault Aviation Model Falcon 6X, Limit Pilot Forces—Side-Stick Controller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; amendment.

SUMMARY: These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 6X airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This airplane is equipped with an electronic flight-control system that includes pilot controls through a side stick instead of through a conventional wheel or control stick. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault on March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Todd Martin, Materials and Structural Properties Section, AIR–621, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3210; email *todd.martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2012, Dassault Aviation applied for a type certificate for their new Model Falcon 5X airplane. Special conditions were issued for that design on January 27, 2016 (81 FR 4579). However, Dassault has decided not to release an airplane under the model designation Falcon 5X, instead choosing to change that model designation to Falcon 6X.

In February of 2018, due to engine supplier issues, Dassault extended the type certificate application date for their Model Falcon 5X airplane under new Model Falcon 6X. This amendment to the original special conditions reflects the model-name change. This airplane is a twin-engine business jet with seating for 19 passengers and a maximum takeoff weight of 77,460 pounds. The Dassault Model Falcon 6X airplane design remains unchanged from the Model Falcon 5X in all material respects other than different engines.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault must show that the Model Falcon 6X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–146.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 6X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 6X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Dassault Model Falcon 6X airplane will incorporate the following novel or unusual design feature:

This airplane is equipped with an electronic flight-control system that includes pilot controls through a side stick instead of through a conventional wheel or control stick.

Discussion

The Dassault Model Falcon 6X airplane is equipped with a side stick instead of a conventional wheel or control stick. The requirement of § 25.397(c), which defines limit pilot forces and torques, applies to conventional wheel or control stick and is therefore not adequate for this new side-stick design with electronic flight controls that affect maneuvering.

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

Discussion of Comments

The FAA issued Final Special Conditions, Request for Comment Special Conditions No. 25–607–SC for the Dassault Model Falcon 5X airplane, which was published in the **Federal Register** on January 27, 2016 (81 FR 4579). No comments were received, and the special conditions are adopted as proposed, with amendments.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 6X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these

special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued, in lieu of the aileron-control and elevator-control forces specified in § 25.397(c), as part of the type-certification basis for the Dassault Model Falcon 6X airplane.

For airplanes equipped with side-stick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows.

1. For all components between and including the side-stick control-assembly handle and its control stops:

Pitch	Roll
Nose up, 200 lbs force ... Nose down, 200 lbs force.	Nose left, 100 lbs force. Nose right, 100 lbs force.

2. For all other components of the side-stick control assembly, but excluding the internal components of the electrical sensor assemblies, to avoid damage to the control system as the result of an in-flight jam:

Pitch	Roll
Nose up, 125 lbs force ... Nose down, 125 lbs force.	Nose left, 50 lbs force. Nose right, 50 lbs force.

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

Patrick R. Mullen,

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

[FR Doc. 2022–06171 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0713; Project Identifier AD–2021–00180–R; Amendment 39–21990; AD 2022–07–03]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Inc., Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Bell Textron Inc., Model 412, 412EP, and 412CF helicopters. This AD was prompted by evaluation results showing flight loads that impact the collective lever fatigue life. This AD requires adding a permanent hours time-in-service (TIS) penalty for certain collective levers and prohibits installing those collective levers unless the permanent hours TIS penalty has been added. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, United States; phone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com*; or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0713; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Hye Yoon Jang, Aerospace Engineer, Delegation Oversight Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5190; email *hye.yoon.jang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Textron Inc., Model 412, 412EP, and 412CF helicopters. The NPRM published in the **Federal Register** on August 27, 2021 (86 FR 48078). The NPRM was prompted by the results of an evaluation of BLR Aerospace Strake and FastFin (Strake and FF) system part number (P/N) 412–705–040–101. The NPRM stated that during the evaluation, additional flight loads were recorded that impact the collective lever fatigue life. Accordingly, the NPRM proposed to require adding a permanent life penalty for affected collective levers and prohibit installing those collective levers unless the permanent life penalty has been added. This condition, if not addressed, could result in fatigue damage and cracking, failure of the collective lever, and subsequent loss of control of the helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter; Bell Textron, Inc. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for a Change to Nomenclature

Bell Textron, Inc., requested the FAA revise the penalty nomenclature from ''life penalty'' to ''flight hour penalty'' throughout the AD action. Bell Textron, Inc., stated that the penalty is only applied to hours TIS and that the life remains unchanged.

The FAA partially agrees. The FAA agrees to changing the nomenclature; however, the nomenclature typically used in rotorcraft FAA AD actions for domestic products is ''hours TIS'' (or ''total hours TIS'') instead of flight hours (or total flight hours). The FAA has revised that nomenclature accordingly in this final rule.

Request for a Change to the Description of What Prompted This AD

Bell Textron, Inc., requested the FAA clarify the description of what prompted this AD; specifically that during the evaluation, the additional flight loads

that impact the collective lever fatigue life is for helicopters with the Strake and FF system installed.

The FAA agrees and has revised this final rule accordingly.

Request for Changes to the Preamble

Bell Textron, Inc., requested the FAA make revisions to the Proposed AD Requirements in This NPRM section.

The FAA acknowledges this comment; however, because this section does not exist in a final rule after an NPRM, the commenter's request does not apply.

Bell Textron, Inc., requested the FAA make revisions to the Differences Between This Proposed AD and the Service Information section.

The FAA acknowledges this comment; however, the specified difference has been deleted because of a certain other change. In light of this, the commenter's request no longer applies.

Requests for Changes to the Notes

Bell Textron, Inc., requested the FAA revise Note 1 to paragraph (g)(1)(i) to clarify that the specified serial-numbered helicopters require the flight hour (hours TIS) penalty after delivery.

The FAA partially agrees. The FAA agrees to clarify that the specified serial numbers are identified as needing the penalty applied. Accordingly, the FAA has revised Note 1 to paragraph (g)(1)(i) in this final rule to identify the specified serial numbers as being originally delivered with a Strake and FF system installed and needing the flight hour (hours TIS) penalty on collective lever P/N 412–010–408–101 applied.

Bell Textron, Inc., requested the FAA delete Note 2 to paragraph (g)(1)(ii) because it would be redundant with incorporation of changes to the required actions it requested pertaining to helicopters with a Strake and FF system P/N 412–705–040–101 installed after delivery from the manufacturer.

The FAA agrees and has deleted Note 2 to paragraph (g)(1)(ii) in this final rule.

Requests for Changes to the Required Actions

Bell Textron, Inc., requested the FAA make changes to the penalty calculation requirement for helicopters with a Strake and FF system P/N 412–705–040–101 installed after delivery from the manufacturer because the calculation needs to provide the remaining time for those affected collective levers.

The FAA agrees and has revised that requirement in this final rule.

Bell Textron, Inc., requested the FAA delete the penalty requirement for helicopters without a Strake and FF system P/N 412–705–040–101 installed because the evaluation results did not show grounds for a flight hour penalty for those helicopters, and according to Bell Textron, Inc., requiring the penalty would create unreasonable economic losses resulting from premature replacement of the collective lever.

The FAA agrees and has revised this final rule accordingly.

Bell Textron, Inc., requested the FAA revise the prohibition of installing a new (zero total hours TIS) collective lever P/N 412–010–408–101 to clarify that the prohibition requirement is for helicopters with a Strake and FF system P/N 412–705–040–101 installed because a penalty of 5,000 hours TIS is not justified for a new (zero total hours TIS) collective lever P/N 412–010–408–101 installed on a baseline configuration aircraft (without a Strake and FF system).

The FAA agrees and has revised this final rule accordingly.

Bell Textron, Inc., requested the FAA delete the prohibition of installing a used collective lever P/N 412–010–408–101 due to flight evaluation results that do not support flight hour penalty to the collective lever PN 412–010–408–101 on a baseline configuration.

The FAA agrees and has revised this final rule accordingly.

Conclusion

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

Related Service Information

The FAA reviewed Bell Helicopter Alert Service Bulletin 412–12–151, Revision A, dated July 8, 2014. This service information specifies procedures for adding a permanent flight hour (hours TIS) penalty for collective levers installed or previously installed on helicopters with a Strake and FF system P/N 412–705–040–101.

Differences Between This AD and the Service Information

The service information specifies adding the permanent life penalty at the next scheduled inspection, whereas this AD requires that action within 50 hours TIS after the effective date of this AD instead.

Costs of Compliance

The FAA estimates that this AD affects 96 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing a collective lever takes about 2 work-hours and parts cost about $18,237, for an estimated cost of $18,407 per helicopter and up to $1,767,072 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–07–03 Bell Textron Inc.: Amendment 39–21990; Docket No. FAA–2021–0713; Project Identifier AD–2021–00180–R.

(a) Effective Date

This airworthiness directive (AD) is effective April 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Inc., Model 412, 412EP, and 412CF helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2700, Flight Control System.

(e) Unsafe Condition

This AD was prompted by evaluation results showing flight loads that impact the collective lever fatigue life on helicopters with a BLR Aerospace Strake and FastFin (Strake and FF) system installed. The FAA is issuing this AD to prevent fatigue damage and cracking, which could result in failure of the collective lever and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 50 hours time-in-service (TIS) after the effective date of this AD:

(i) For helicopters with a Strake and FF system part number (P/N) 412–705–040–101 installed since initial delivery from the manufacturer, add a permanent penalty of 5,000 hours TIS to the total hours TIS indicated on the component history card or equivalent record for the collective lever P/N 412–010–408–101.

Note 1 to paragraph (g)(1)(i): Bell Helicopter service information identifies helicopters with serial numbers 36570, 36579, 36587, and 36593 through 36602 inclusive, as being originally delivered with a Strake and FF system installed and needing the flight hour (hours TIS) penalty on collective lever P/N 412–010–408–101 applied.

(ii) For helicopters with Strake and FF system P/N 412–705–040–101 installed after delivery from the manufacturer, calculate the TIS penalty for collective lever P/N 412–010–408–101 by accomplishing the following:

(A) Verify the component history card or equivalent record of the collective lever and note the total hours TIS.

(B) Determine the remaining hours TIS by subtracting the total hours TIS of the collective lever from its life limit of 10,000 total hours TIS.

(C) Divide the remaining time by 2 and add that number to the existing total hours TIS. This is the new total TIS after being penalized.

(D) Enter the new total TIS after being penalized from paragraph (g)(1)(ii)(C) of this AD to the component history record or equivalent record for the collective lever.

(2) Before further flight, remove from service any collective lever P/N 412–010–408–101 that has reached or exceeded its life limit of 10,000 total hours TIS. Thereafter, remove from service each collective lever P/N 412–010–408–101 on or before reaching its life limit of 10,000 total hours TIS.

(3) As of the effective date of this AD, do not install a new (zero total hours TIS) collective lever P/N 412–010–408–101 on any helicopter with Strake and FF system P/N 412–705–040–101 installed unless a penalty of 5,000 hours TIS has been added to the total hours TIS on its component history card or equivalent record.

(4) As of the effective date of this AD, do not install a used collective lever P/N 412–010–408–101 on any helicopter with Strake and FF system P/N 412–705–040–101 installed unless a penalty is calculated by accomplishing the actions required in paragraph (g)(1)(ii) of this AD.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ASW-190-COS@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.

(j) Related Information

For more information about this AD, contact Hye Yoon Jang, Aerospace Engineer, Delegation Oversight Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5190; email *hye.yoon.jang@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on March 16, 2022.

Derek Morgan,

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

[FR Doc. 2022–05916 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by the Commission's regulations, the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

DATES: This final rule is effective March 23, 2022 and establishes cost limits applicable from January 1, 2022 through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Richard W. Foley, Chief, Certificates Branch 1, Division of Pipeline Certificates, (202) 502–8955.

SUPPLEMENTARY INFORMATION: Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2022, as published in Table I of

§ 157.208(d) and Table II of § 157.215(a), are hereby issued.

Effective Date

This final rule is effective March 23, 2022. The provisions of 5 U.S.C. 804 regarding Congressional review of Final Rules does not apply to the Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. The Final Rule merely updates amounts published in the Code of Federal Regulations to reflect the Department of Commerce's latest annual determination of the Gross Domestic Product (GDP) implicit price deflator, a mathematical updating required by the Commission's existing regulations.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

Issued: March 15, 2022.

Terry L. Turpin,

Director, Office of Energy Projects.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. In § 157.208(d), revise Table I to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I TO PART 157

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000
2003	7,600,000	21,200,000
2004	7,800,000	21,600,000
2005	8,000,000	22,000,000
2006	9,600,000	27,400,000
2007	9,900,000	28,200,000
2008	10,200,000	29,000,000
2009	10,400,000	29,600,000
2010	10,500,000	29,900,000
2011	10,600,000	30,200,000
2012	10,800,000	30,800,000
2013	11,000,000	31,400,000
2014	11,200,000	31,900,000
2015	11,400,000	32,400,000
2016	11,600,000	32,800,000
2017	11,800,000	33,200,000
2018	12,000,000	33,800,000
2019	12,300,000	34,600,000
2020	12,500,000	35,200,000
2021	12,600,000	35,600,000
2022	13,100,000	37,100,000

* * * * *

■ 3. In § 157.215(a)(5), revise Table II to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II TO PART 157

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000
2004	5,000,000
2005	5,100,000
2006	5,250,000
2007	5,400,000
2008	5,550,000
2009	5,600,000
2010	5,700,000
2011	5,750,000
2012	5,850,000
2013	6,000,000
2014	6,100,000
2015	6,200,000
2016	6,300,000
2017	6,400,000
2018	6,500,000
2019	6,600,000
2020	6,700,000
2021	6,800,000
2022	7,100,000

* * * * *

[FR Doc. 2022–06085 Filed 3–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 4

[Docket No. FDA–2022–D–0192]

Certain Ophthalmic Products: Policy Regarding Compliance With 21 CFR Part 4; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Certain Ophthalmic Products: Policy Regarding Compliance With 21 CFR part 4.'' This guidance describes FDA's compliance policy with respect to the requirements of FDA regulations that are now applicable to ophthalmic drugs that are packaged with eye cups, eye droppers, and other dispensers intended for ophthalmic use.

DATES: The announcement of the guidance is published in the **Federal Register** on March 23, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–0192 for ''Certain Ophthalmic Products: Policy Regarding Compliance With 21 CFR part 4.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, 301–796–8930, *combination@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Certain Ophthalmic Products: Policy Regarding Compliance With 21 CFR part 4.'' We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because FDA needs to communicate its compliance policy in a timely manner given the urgency of these issues following the decision from the U.S. Court of Appeals for the District of Columbia Circuit in *Genus Medical Technologies LLC* v. *U.S. Food and Drug Administration* (*Genus*), 994 F.3d 631 (D.C. Cir. 2021). Although this guidance document is immediately in effect, it remains subject to comment in accordance with FDA's good guidance practices (GGP) regulation and FDA will consider all comments received and determine whether revisions to the guidance document are appropriate (§ 10.115(g)(3)).

In accordance with § 200.50(c) (21 CFR 200.50(c)), eye cups, eye droppers, and other dispensers intended for ophthalmic use (collectively referred to as ophthalmic dispensers) have been regulated as drugs when packaged together with the ophthalmic drug with which they were intended to be used. Therefore, products consisting of an ophthalmic drug packaged with an ophthalmic dispenser were not regulated as combination products as defined in § 3.2(e) (21 CFR 3.2(e)) and were not subject to the requirements of part 4 (21 CFR part 4). This practice is a departure from how FDA generally regulates other devices that are packaged with the drugs with which they are intended to be used. Specifically, when a device is packaged together with the drug with which it is intended to be used, FDA regulates that drug and the device together as a combination product (see § 3.2(e)).

On April 16, 2021, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *Genus.* The *Genus* court stated ''[e]xcepting combination products, . . . devices must be regulated as devices and drugs—if they do not also satisfy the device definition—must be regulated as drugs.'' [1] In implementing this decision, FDA has determined that the language in § 200.50(c) indicating that eye cups,

[1] For more information on FDA's implementation of the *Genus* decision, please see Docket No. FDA–2021–N–0843, ''Genus Medical Technologies LLC Versus Food and Drug Administration; Request for Information and Comments,'' (86 FR 43553, August 9, 2021).

eye droppers, and ophthalmic dispensers are regulated as drugs when packaged with ophthalmic drugs is now obsolete, because these articles meet the ''device'' definition. Accordingly, an ophthalmic dispenser that meets the definition of device in section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(h)) and that is packaged together with an ophthalmic drug is now regulated as a device constituent part (see § 3.2(e)), and, as such, is subject to the requirements in part 4. Because the drug constituent part provides the primary mode of action of these combination products, generally FDA's Center for Drug Evaluation and Research (CDER) will have primary jurisdiction over these products.

This change impacts products subject to pending applications,[2] approved products, and products marketed pursuant to section 505G of the FD&C Act (21 U.S.C. 355h) without an approved application under section 505 of the FD&C Act (21 U.S.C. 355) (commonly referred to as over-the-counter monograph drugs).

We recognize that some applicants and manufacturers may need to develop policies and procedures necessary to comply with the requirements in part 4. Therefore, we are issuing the guidance to communicate FDA's compliance policy with respect to these products. The guidance explains FDA's policy with respect to compliance with the requirements of part 4. Specifically, the guidance explains that FDA generally does not intend to take action with respect to noncompliance with part 820 (21 CFR part 820) as described in part 4, subpart A, with respect to ophthalmic products that were not previously regulated as combination products because of the now obsolete language in § 200.50(c) for a period of 12 months following the publication of the guidance. Further, the guidance explains that, with respect to ophthalmic products affected by the *Genus* decision that incorporate lower-risk device constituent parts, for example, eye dropper bottles/ampules that administer the drug directly to the eye, FDA does not intend to take action with respect to noncompliance with any applicable part 820 requirements for these products until FDA further considers the application of these requirements to these combination products. Additionally, the guidance describes FDA's policy with respect to pending applications and how FDA will determine when compliance with the requirements of part 4, subpart A, must be demonstrated (*i.e.,* during the review of the application or after approval). As part of this notice, FDA is soliciting feedback from stakeholders as to whether a 12-month period is sufficient for affected stakeholders to develop and implement the policies and procedures necessary to comply with the requirements of part 4, including whether different amounts of time should be considered with respect to compliance with subpart A and subpart B of part 4. Finally, in addition to the guidance for industry we are announcing today, FDA also encourages applicants and manufacturers to review other guidances for industry that apply to CDER-led drug-device combination products.

This guidance is being issued consistent with FDA's GGP regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Certain Ophthalmic Products: Policy Regarding Compliance With 21 CFR part 4.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

[2] For the purposes of this guidance, pending applications include applications on which FDA has taken an action that is not an approval action and that are not currently pending review before the Agency (*i.e.,* applications that have been tentatively approved or applications that have received a complete response letter) and applications currently pending review before the Agency (including supplements to approved applications).

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 are approved under OMB control numbers 0910–0001, 0910–0230, and 0910–0291. The collections of information in 21 CFR 600.80 and 600.81 are approved under OMB control number 0910–0308. The collections of information in 21 CFR 606.171 are approved under OMB control number 0910–0458. The collections of information in 21 CFR 803.50, 803.53, and 803.56 are approved under OMB control numbers 0910–0291 and 0910–0437. The collections of information in 21 CFR 806.10 and 802.20 are approved under OMB control number 0910–0359. The collections of information in 21 CFR part 211 have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073. The collections of information in 21 CFR parts 606 and 640 are approved under OMB control number 0910–0116. The collections of information in 21 CFR part 610 are approved under OMB control numbers 0910–0116 and 0910–0338 (also for 21 CFR part 680 and Form FDA 356h). The collections of information in 21 CFR part 1271, subparts C and D, are approved under OMB control number 0910–0543. The collections of information in 21 CFR 4.102, 4.103, and 4.105 are approved under OMB control number 0910–0834.

III. Electronic Access

Persons with access to the internet may obtain the document at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: March 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05776 Filed 3–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2019–N–4203]

Advisory Committee; Bone, Reproductive and Urologic Drugs Advisory Committee; Change of Name and Function; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is amending the standing advisory committees' regulations to change the name and function of the Bone, Reproductive and Urologic Drugs Advisory Committee. This action is being taken to reflect changes made to the charter for this advisory committee.

DATES: This rule is effective March 23, 2022. The changes are applicable March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Teresa Hays, Committee Management Officer, Food and Drug Administration,

10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8220.

SUPPLEMENTARY INFORMATION: FDA is announcing that the name of the Bone, Reproductive and Urologic Drugs Advisory Committee, which was established on March 23, 1978, has been changed. The Agency decided that the name ''Obstetrics, Reproductive and Urologic Drugs Advisory Committee'' more accurately describes the subject areas for which the committee is responsible. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug products for use in the practice of obstetrics, gynecology, urology and related specialties, and makes appropriate recommendations to the Commissioner of Food and Drugs. The mandate of the committee no longer includes osteoporosis and metabolic bone disease. As osteoporosis and metabolic bone diseases are topics related to endocrinology and metabolic disease, these will be discussed by the Endocrinologic and Metabolic Drugs Advisory Committee.

The Obstetrics, Reproductive and Urologic Drugs Advisory Committee name was changed, and its functions changed in the charter renewal dated March 23, 2022. In this final rule, FDA is revising 21 CFR 14.100(c)(9) to reflect these changes.

Publication of this final rule constitutes a final action on this change under the Administrative Procedure Act. Under 5 U.S.C. 553(b)(B) and (d)(3) and 21 CFR 10.40(d) and (e)(1), the Agency finds good cause to dispense with notice and public procedure and to proceed to an immediately effective regulation. Such notice and procedures are unnecessary and are not in the public interest because the final rule is merely codifying the new name and the function of the advisory committee to reflect the current committee charter.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155; Pub. L. 113–54.

■ 2. Section 14.100 is amended by revising paragraph (c)(8) heading and paragraph (c)(8)(ii) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(8) *Obstetrics, Reproductive and Urologic Drugs Advisory Committee.*

* * * * *

(ii) Function: The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug products for use in the practice of obstetrics, gynecology, urology and related specialties, and makes appropriate recommendations to the Commissioner of Food and Drugs.

* * * * *

Dated: March 16, 2022.

Andi Lipstein Fristedt,

Deputy Commissioner for Policy, Legislation, and International Affairs, U.S. Food and Drug Administration.

[FR Doc. 2022–05965 Filed 3–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130 and 131

[Docket No. FDA–2000–P–0126 (formerly Docket No. 2000P–0658)]

RIN 0910–AI40

Milk and Cream; Petition for an Administrative Stay of Action: Definitions and Standards of Identity for Yogurt, Lowfat Yogurt, and Nonfat Yogurt

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; notification of administrative stay.

SUMMARY: The Food and Drug Administration (FDA or we) is providing notice of a stay of the effectiveness of certain provisions of a final rule published in the **Federal Register** of June 11, 2021. The final rule amended the definition and standard of identity for yogurt and revoked the definitions and standards of identity for lowfat yogurt and nonfat yogurt. FDA is publishing this notification in response to objections timely filed in accordance with regulatory requirements.

DATES: FDA is administratively staying certain provisions in the final rule published on June 11, 2021 (86 FR 31117). FDA will publish a document in the **Federal Register** lifting the stay or taking further action as needed.

ADDRESSES: For access to the docket, 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, between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Joan Rothenberg, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2021 (86 FR 31117), FDA issued a final rule (the 2021 final rule) amending the definition and standard of identity for yogurt ((§ 131.200) (21 CFR 131.200)) and revoking the definitions and standards of identity for lowfat yogurt (21 CFR 131.203) and nonfat yogurt (21 CFR 131.206). The 2021 final rule's effective date was July 12, 2021. Pursuant to section 701(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(e)), the 2021 final rule notified persons who would be adversely affected by the 2021 final rule that they could file objections, specifying with particularity the provisions of the 2021 final rule deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections.

The International Dairy Foods Association (IDFA) and Chobani timely filed objections and requests for a hearing with respect to several provisions in the 2021 final rule (see Objections and Request for Hearings submitted by Michael Dykes, DVM, President and Chief Executive Officer, International Dairy Foods Association, dated July 12, 2021, to the Dockets Management Staff, Food and Drug Administration (Comment ID FDA–2000–P–0126–0109) and Objection and Requests for Hearing submitted by Matthew Graziose, Ph.D., Director, Regulatory Affairs & Compliance, Chobani, dated July 12, 2021, to the Dockets Management Staff, Food and Drug Administration (Comment ID FDA–2000–P–0126–0108)). Section 701(e)(2) of the FD&C Act provides that, until final action is taken by the Secretary, the filing of objections

operates to stay the effectiveness of those provisions to which the objections are made. We established the definition and standard of identity for yogurt in 1981 (1981 final rule) (46 FR 9924 at 9939, January 30, 1981). The 2021 final rule amended some provisions in the definition and standard of identity and maintained others. Staying the effectiveness of these provisions results in the corresponding requirements in the 1981 final rule remaining in effect. This notice provides clarification on which provisions of the 2021 final rule have been stayed and which requirements of the 1981 final rule are in effect pending final action under section 701(e) of the FD&C Act.

II. Objections and Requests for Hearing

IDFA's objections were directed at several provisions in § 131.200(a) of the 2021 final rule. IDFA objected to the requirement in § 131.200(a) that yogurt, before the addition of bulky flavoring ingredients, has either a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower. This provision of the 2021 final rule is stayed. FDA notes that the definition and standard of identity established in 1981 included a minimum titratable acidity requirement of 0.9 percent, but that provision was stayed by the filing of objections in 1981 (47 FR 41519 at 41523, September 21, 1982). Consequently, no minimum titratable acidity requirement or maximum pH requirement is in effect.

IDFA also objected to the provision that yogurt, before the addition of bulky flavoring ingredients, contains not less than 3.25 percent milkfat and the provision requiring pasteurized cream, if used as a basic dairy ingredient under § 131.200(b) or an optional dairy ingredient under § 131.200(c), to be added before culturing. These provisions of the 2021 final rule are stayed. However, a minimum milkfat of 3.25 percent before the addition of bulky flavors and the requirement that cream be included in the culturing process remain in effect under the definition and standard of identity established in the 1981 final rule.

Chobani objected to the exclusion of ultrafiltered milk from the basic dairy ingredients in § 131.200(b). This provision is stayed insofar as it prohibits the use of ultrafiltered milk. However, the provision in the 1981 final rule remains in effect with respect to the use of ultrafiltered milk. This means that ultrafiltered milk may not be used as a basic dairy ingredient in the manufacture of yogurt. Because we received no objections to the use of ultrafiltered milk as an optional dairy ingredient under § 131.200(c) of the 2021 final rule, ultrafiltered milk may be used to increase the milk solids, not fat content, of the food above 8.25 percent, provided that the ratio of protein to total nonfat solids of the food and the protein efficiency ratio of all protein present is not decreased as a result.

IDFA also objected to provisions in § 131.200(d) for other optional ingredients. These provisions included § 131.200(d)(2), which limits the use of sweeteners to nutritive carbohydrate sweeteners, and § 131.200(d)(8)(ii), which requires a minimum vitamin D content of 25 percent Daily Value (DV) per reference amount customarily consumed (RACC) if vitamin D is added. Both provisions in the 2021 final rule are stayed. Optional vitamin D addition has been permitted since 1982 at a level of 400 international units per quart (see 47 FR 41519 at 41520 and 41524); this limitation on vitamin D addition remains in effect. The prohibition on the use of sweeteners other than nutritive carbohydrate sweeteners remains in effect under the 1981 final rule's definition and standard of identity. Because we received no objections to permitting the use of all safe and suitable nutritive carbohydrate sweeteners, nutritive carbohydrate sweeteners are no longer limited to those listed under § 131.200(c)(2) in the 1981 final rule.

This notification does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed (21 CFR 12.23). Until FDA makes such a determination and issues a notice under 21 CFR 12.28, 12.26, or 12.35, we intend to exercise enforcement discretion with respect to the following:

- Addition of vitamin D to yogurt under § 131.200 and lower fat yogurt products under § 130.10 (21 CFR 130.10) such that the food contains at least 10 percent DV per RACC, within limits of current good manufacturing practices.
- Use of nonnutritive sweeteners in yogurt under § 131.200 and lower fat yogurt products under § 130.10 that are not labeled with a statement of identity that includes an expressed nutrient content claim consistent with the use of nonnutritive sweeteners.
- Use of bulky flavor ingredients in lower fat yogurt products under § 130.10 that increase the total fat content above the level specified in § 101.62(b) (21 CFR 101.62(b)) for the expressed nutrient content claim in the statement of identity, provided that the level of milkfat in the product is consistent with the level specified in § 101.62(b) and the statement of identity also includes a descriptor of the bulky flavor ingredient (*e.g.,* ''lowfat yogurt with coconut'').

Under this enforcement discretion, we do not intend to take action with respect to yogurt and lower fat yogurt products that meet these criteria provided that the products otherwise conform to the definition and standard of identity under § 131.200 or § 130.10.

III. Provisions Stayed

Pursuant to section 701(e) of the FD&C Act, we hereby announce that the following provisions of the 2021 final rule are stayed by the objections filed:

1. The requirement in § 131.200(a) that yogurt, before the addition of bulky flavoring ingredients, has either a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower.

2. The requirement in § 131.200(a) that yogurt, before the addition of bulky flavoring ingredients, contains not less than 3.25 percent milkfat.

3. The prohibition in § 131.200(a), (b), and (c) on adding pasteurized cream after culturing.

4. The exclusion of ultrafiltered milk from the basic dairy ingredients in § 131.200(b).

5. The limitation on the use of sweeteners in § 131.200(d)(2) to nutritive carbohydrate sweeteners.

6. The requirement in § 131.200(d)(8)(ii) that vitamin D, if added, must be present in such quantity that the food contains not less than 25 percent DV per RACC, within limits of current good manufacturing practices.

IV. Effective/Compliance Dates

This document hereby confirms the effective date of the 2021 final rule as July 12, 2021, and the compliance date as January 1, 2024, except with respect to the provisions in § 131.200(a), (b), (c), (d)(2), and (d)(8)(ii) stated above, which are stayed.

Dated: March 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05804 Filed 3–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130

[Public Notice: 11657]

RIN 1400–AE27

International Traffic in Arms Regulations: Consolidation and Restructuring of Purposes and Definitions

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to better organize the purposes and definitions of the regulations. This rule consolidates and co-locates authorities, general guidance, and definitions.

DATES:

Effective date: This interim final rule is effective September 6, 2022.

Comment due date: The Department of State will accept comments on this interim final rule until May 9, 2022.

ADDRESSES: Interested parties may submit comments by one of the following methods:

- *Email: DDTCPublicComments@state.gov* with the subject line, International Traffic in Arms Regulations: Definitions.
- *Internet: At www.regulations.gov,* search for this document using Docket DOS–2022–0004.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–1282; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Consolidation of Definitions and Restructuring of Part 120.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The regulations, codified as subchapter M of chapter I, title 22 of the Code of Federal Regulations (''the subchapter'') implement those authorities of the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) delegated to the Secretary of State pursuant to Executive Order 13637. This rule restructures part 120 of the ITAR to better organize the definitions previously found in that part and other locations throughout the ITAR and to consolidate provisions that provide background information or otherwise apply throughout the regulations. In addition, this rule adds text not previously found in the ITAR and makes clarifying revisions to existing text. This rule is intended to be the first in a series of rulemakings that will further streamline and clarify the subchapter. The Department makes the following revisions to the ITAR in this interim final rule:

Revisions of General Application

Prior to this rulemaking, generally applicable information and definitions were spread throughout the subchapter. As a result of this rulemaking, part 120 is dividing into three subparts: Subpart A—General Information; Subpart B—General Policies and Processes; and Subpart C—Definitions. The division into subparts is intended to provide the reader with a roadmap for the regulations. Subpart A—General Information, consolidates and explains the legislative authority and purpose of the regulations to aid in understanding their importance and source. Subpart B—General Policies and Processes, outlines the general processes and policies of the ITAR. Finally, Subpart C—Definitions, provides a consolidated list of defined terms that are applicable throughout the ITAR. Part and section-specific information and definitions continue to be located in the applicable part or section of the regulations. DDTC notes that the definitions in subpart C are not included in alphabetical order. DDTC endeavored to include definitions in a logical order so as to provide larger conceptual definitions first, to keep like concepts together, to nest related definitions in single sections, and to match the framework of the regulations. DDTC believes that this structure outweighs any ease in finding a definition through the use of alphabetization, particularly considering modern methods of electronic search. Finally, DDTC believes that the relatively limited number of defined terms within the subchapter makes this subpart manageable in this way.

DDTC is revising those sections affected by this rule that use acronyms to follow a standard format. Where a single term for which there is a known acronym appears on more than two occasions within any one section, the first instance is followed by a parenthetical containing the acronym and subsequent use of the term is by acronym. This will provide consistency of format without sacrificing clarity and limits unnecessary text.

Section-Specific Revisions

The following descriptions explain non-editorial changes in text to sections in this rule. Further, when discussing amended text that also involves the movement of text to a new location or the creation of new text modeled on existing language, the former or existing location is provided. When discussing amended text below, citations are to the section cites of this rule (*i.e.,* the new location). When discussing text that has been moved by this rule, the location of the text prior to this rule is referred to as its ''former'' location. When discussing a section or text that is not moved by this rule, the location is referred to as its ''existing'' location. The table at the conclusion of the preamble provides both the former and new ITAR citations for all relocations of regulatory text at the section or sentence level for assistance in associating new citations with former citations. It also identifies all existing (*i.e.,* non-relocated) sections that have been revised. This rule does not amend or relocate any ITAR provisions not included in the table below. In order to maintain focus on changes to the text of the ITAR as it appeared prior to this rule and to the addition of new text to the subchapter and to minimize unnecessary explanation, the following preamble text does not describe the new location of the text formerly located in the section cites discussed. Persons interested in the movement of sections should review the table at the end of this section.

Section 120.1 General Authorities

Revising the section heading of existing § 120.1 from ''General authorities, receipt of licenses, and ineligibility'' to ''General Authorities'' to reflect the revised focus of the section. Revising the introductory paragraph of § 120.1(a) to clarify the manner of delegation by the Secretary of State to the Deputy Assistant Secretary of State for Defense Trade Controls, Bureau of Political-Military Affairs of the authority to administer the ITAR.

Section 120.2 Designation of Defense Articles and Defense Services

Revising the fifth sentence of existing § 120.2 to include a limitation to defense articles and defense services ''on the USML in part 121 of this subchapter'' in order to account for the delegation to the Attorney General of the authority to designate defense articles and services subject to control for permanent import by section 1(n)(ii) of Executive Order 13637.

Section 120.4 Commodity Jurisdiction

Revising existing § 120.4 to limit it to a statement of policy, by relocating its procedural aspects. Former paragraphs (c) through (g) of § 120.4, which provide

information about the procedures and processes for submitting a commodity jurisdiction request, have been relocated to new § 120.12 titled Commodity Jurisdiction Determination Requests.

Section 120.5 Relation to Regulations of Other Agencies

Revising the title of § 120.5 to eliminate reference to export of items subject to the EAR in order to more accurately describe the scope of the revised section, which is expanded to include relation to nuclear related controls and the Department of Energy and Nuclear Regulatory Commission (formerly found at § 123.20). In addition, revising § 120.5 to provide introductory headings to each paragraph to identify the related agencies. Revising existing § 120.5(a) by limiting its scope to the relation to the Department of Justice, moving the language regarding the relation to the Department of Commerce beginning at sentence 7 to a new paragraph (b), and by removing the cross-reference to former § 123.20 which is no longer necessary given the addition of § 120.5(c) (formerly found at § 123.20). Revising § 120.5(b)(2) (formerly § 120.5(b)) by moving the sentence that says items subject to the Export Administration Regulations (EAR) but exported under authorization from DDTC do not require separate authorization from the Department of Commerce. That sentence now appears just before the sentence prohibiting the use of ITAR exemptions for items subject to the EAR that are unaccompanied by a defense article. DDTC believes this change minimizes possible confusion regarding requirements for Commerce approval and the use of ITAR exemptions. The change also clarifies that the reference to ''these items'' in new sentence three applies to the items discussed in sentences one and two. Also, the final parenthetical to § 120.5(b) is removed as an unnecessary restatement of general information.

Section 120.6 U.S. Criminal Statutes

Revising § 120.6(b) and (d) (formerly found at § 120.27(a)(2) and (4), respectively) to update U.S. Code citations to the Export Administration Act, to add a reference to the Export Control Reform Act, and to reflect the elimination of the Appendix to Title 50.

Section 120.10 Introduction to the U.S. Munitions List

Revising in § 120.10(a) (formerly found at § 121.1(a)) reference from ''[i]n this part'' to ''part 121 of this subchapter'' in order to reflect the move of the ''Introduction to the U.S. Munitions List'' from part 121 to new subpart A. Revising the paragraph heading in § 120.10(c) (formerly found at § 121.1(a)(2) from ''*Significant Military Equipment.*'' to ''*Significant Military Equipment paragraphs in the USML.*'' in order to more clearly distinguish the explanation of identifiers in the USML from the definition of significant military equipment at § 120.36(a) (formerly found at § 120.7(a)).

Section 120.11 Order of Review

Adding in § 120.11(c) a statement of the Department's interpretation that defense articles remain controlled following incorporation or integration into non-defense articles.

Section 120.12 Commodity Jurisdiction Determination Requests

Revising § 120.12 in its entirety from its former purpose as the address of the Directorate of Defense Trade Controls to a new purpose describing the process for obtaining a CJ determination. The revised section is constructed by moving parts of former § 120.4(a) and all of § 120.4(f) to § 120.12(a) and former § 120.4(c) and (d)(2) to § 120.12(b). Specific reference to part 121 is added to paragraph (a) in order to clarify that DDTC determinations using the CJ process are limited to defense articles and services in that part. Persons with questions regarding the U.S. Munitions Import List (USMIL) should first address those questions to the Bureau of Alcohol, Tobacco, Firearms and Explosives. The references to ''designation'' (formerly found at § 120.4(d)(2) and (3)) is revised to ''determination'' in § 120.12(b) and (c) in order to minimize possible confusion regarding commodity jurisdiction determination requests. In addition, a reference to Category XXI (Articles, Technical Data, and Defense Services Not Otherwise Enumerated) is added to paragraph (c) in order to clarify that the determination of the request is that the article or service warrants control, but that at the time of the request the article or service does not meet the criteria of a defense article or defense service on the USML, or provide the equivalent performance capabilities of a defense article on the USML.

Revising in § 120.12(f) (formerly found at § 120.4(b)) the statement regarding registration and the CJ process. The second sentence of former § 120.4(b) regarding the requirement to register following a determination that a commodity is covered by the USML is removed from § 120.12(f) as it is a duplicative statement of the general registration requirements found in part 122 and therefore unnecessary. Removal is for clarification purposes only and does not reflect a change in policy.

Section 120.13 Registration

Adding in § 120.13(b) a statement of registration policy regarding brokering derived from the requirements of §§ 129.2(a) and 129.3(a). This statement is for clarity and does not reflect a change in policy or regulation.

Section 120.14 Licenses and Related Authorizations

Adding in § 120.14 a general statement of policy regarding activities that are controlled and require a license or related authorization. Those activities are divided into three paragraphs: (a) Export, reexport, retransfer, or temporary import of defense articles, derived from existing § 123.1(a); (b) furnishing or providing defense services, derived from existing § 124.1(a); and (c) brokering activities, derived from existing § 129.4(a). The general statement of policy is slightly revised from the language of the existing authorization sections in that it distinguishes between authorizations requiring a request for approval to be obtained from DDTC (*i.e.,* the existing authorization sections), and the use of an exemption, for which no request is required to be submitted to DDTC.

Section 120.15 Exemptions

Adding in § 120.15(a) an explicit statement that persons otherwise required to register with DDTC may not utilize an exemption without being registered, derived from existing § 120.1(c) and the Note to § 122.1(b). Relocating to § 120.15(b) the statement in former § 120.1(d) that exemptions are not available when parties to the export are generally ineligible. Stating in § 120.15(c) that exemptions generally are not available for use with § 126.1 countries, except as provided in that section. Stating in § 120.15(d) that exemptions are limited as described by each specific exemption section, and adding in § 120.15(f) (formerly found in § 125.6) an overview of the certification requirements to utilize an exemption to the licensing requirements of the ITAR for the export of technical data, which is removed and reserved.

Section 120.16 Eligibility for Approvals

Revising in § 120.16(a)(3) (formerly found at § 120.1(c)(1)(iii)) reference to brokering authorizations from ''prior approval'' to ''approval'' to reflect current usage in part 129. Adding in § 120.16(c) (formerly found at § 120.1(c)) a new reference to publicly announced

Department of State policies regarding eligibility in order to address concerns regarding the use of exemptions and public awareness of the status of end-users or other consignees.

Section 120.17 End-Use Monitoring

Adding in § 120.17 a description of the Blue Lantern End-Use Monitoring program. This description did not previously appear in the ITAR, but is added here to provide an explanation to the regulated community of the Department's obligations pursuant to 22 U.S.C. 2785 to vet regulated transactions both before and after licensing determinations.

Section 120.18 Denial, Revocation, Suspension, or Amendment of Licenses and Other Approvals

Revising in § 120.18(a)(2) (formerly found at § 126.7(a)(2)) reference from ''Export Administration Act'' to ''Export Administration Regulations'' to more accurately reflect the mechanism through which the Department of Commerce authorizes exports. Revising in § 120.18(a)(6) (formerly found at § 126.7(a)(6)) reference from ''debarment'' to ''order denying export privileges'' in relation to Department of Commerce actions in order to reflect the language of the EAR. Adding in § 120.18(a)(9) the statement that an unfavorable finding of an end-use monitoring check may be the basis for disapproving, revoking, suspending, or amending any existing license or license application.

Section 120.19 Violations and Penalties

Adding in § 120.19 a general statement in paragraph (a) of the authority to impose penalties for violations of the ITAR and a reference to part 127 (conduct that constitutes a violation), and in paragraph (b) a statement derived from existing § 127.12(a) of the Department's encouragement of the voluntary disclosure of violations when discovered.

Section 120.20 Administrative Procedures

Adding in § 120.20 general statements (derived from revised language at existing § 128.1) regarding administrative procedures under the ITAR and the relationship of the AECA to the Administrative Procedure Act, respectively.

Section 120.21 Disclosure of Information

Removing in § 120.21(b) (formerly found at § 126.10(b)) reference to section 12(c) of the Export Administration Act, to streamline the text while restating the substantive requirements stated in the AECA.

Section 120.23 Organizations and Arrangements

Creating in § 120.23 a new grouping of various international organizations and arrangements. Revising in § 120.23(a) (formerly found at § 120.31) the description of NATO from a static list of member countries to include reference to admitted member states not listed. This will prevent unnecessary amendment to the section or public confusion regarding references to NATO in the ITAR and the status of member states. Adding in § 120.23(c) reference to the Wassenaar Arrangement on Export Controls not formerly found in the subchapter. Removing in § 120.23(d)(3) (formerly found at § 120.29(c)) an unnecessary reference to the relevant statutory authority regarding Missile Technology Control Regime items and the USML in order to streamline the text.

Section 120.37 Major Defense Equipment

Revising § 120.37 (formerly found at § 120.8) to more closely follow the definitions structure by beginning the paragraph with the defined term.

Section 120.38 Classified

Adding in § 120.38 (formerly found at § 120.46) the phrase ''or predecessor order'' to the definition of classified to conform the single instance definition with the individual definitions of classified previously found within the individual categories of the USML. This change does not expand the applicable scope of the definition of classified. Corresponding changes are made to remove from Categories I through XXI of § 121.1 individual ''Note to paragraph'' definitions of classified wherever found within the USML.

Section 120.40 Compositional Terms

Revising the section heading from ''End-items, components, accessories, attachments, parts, firmware, software, systems, and equipment'' to ''Compositional terms'' to more accurately address the contents of the section (formerly found at § 120.45). The section as formerly written included items that could be either an element of a defense article, or a defense article in and of itself, or might be a part (or component, etc.) of a defense article without being a defense article itself. In order to clarify that the section defines terms that can be used in relation to articles other than defense articles, the section heading is expanded. Other changes include: Adding in § 120.40 a new paragraph (a) to include a single instance definition of commodity, formerly found in Note to paragraphs (a) and (b) of § 120.41, in order to clarify its application throughout the ITAR; and revising the explanatory note to the definition of system in paragraph (h) (formerly found at Note to paragraph (g) of § 120.45) in order to eliminate the redundant second sentence as unnecessary and to limit reference to the relevant source materials and delete the citations to outdated versions of those materials.

Section 120.41 Specially Designed

Revising existing § 120.41 to move from § 120.41 those notes that contain definitions of broad applicability to single instance definitions in §§ 120.42 and 120.43 and to make certain non-substantive revisions to the order and numbering of notes to the section in accordance with Code of Federal Regulations drafting requirements.

Section 120.42 Form, Fit, Function, Performance Capability, Equivalent, Enumerated, and Catch-All Control

In § 120.42 incorporating single instance definitions of form, fit, function, and performance capability (formerly found at Notes 1 and 2 to paragraph (d) of § 120.4 and Note 4 to paragraph (b)(3) of § 120.41); and single instance definitions of equivalent, enumerated, and catch-all control (formerly found at Note 5 to paragraph (b)(3) and Note to paragraph (b) of § 120.41). Revising in § 120.42(f) (formerly found at Note to paragraph (b) of § 120.41) reference from ''article on the U.S. Munitions List'' to ''item designated on the U.S. Munitions List'' to more accurately reflect the constitution of the USML and to distinguish from the reference to ''item'' in the same sentence as applied to the Export Administration Regulations.

Section 120.43 Development, Production, and Related Terms; Basic and Applied Research

Adding in § 120.43(a) and (b) single instance definitions of development and production formerly found in § 120.41 specifically. These single instance definitions were originally included in a previous proposed rule (80 FR 31525, June 3, 2015), and were to be taken from existing Notes 2 and 1, respectively, to § 120.41(b)(3). Although not adopted at that time, DDTC now implements the revision. In response to the 2015 proposed rule, the Department received several public comments regarding the single instance definitions for

development and production. Those comments are addressed here.

One commenter suggested that the department add ''but not limited to'' following ''such as'' in the definition of ''development.'' The Department does not make this change. The use of the term ''such as'' necessarily implies that the following list is non-exclusive, so the addition of the phrase ''but not limited to'' is redundant.

Several commenters requested that the Department insert a note to the definition of ''development'' to state that fabrication of prototypes by universities for academic demonstration or to otherwise test a hypothesis is not development, because the inclusion of these activities within the definition of ''development'' somehow limits the fundamental research exception. The Department does not make this change. The Department believes that the activity is appropriately captured by the definition of ''development''.

A commenter requested that the Department remove the last sentence of the definition of ''development,'' which stated ''[d]evelopment includes modification of the design of an existing item.'' The Department does not make this change. Modification of an existing design creates a distinct design, regardless of the modification.

A commenter suggested that the Department add engineering analysis and design methodology to the definition of ''development'' in place of design analysis and design concepts, and add manufacturing know-how to the definition of ''production'' in place of manufacture. The Department does not make this change. The terms suggested by the commenter are used in specific places in the ITAR for specific purposes, and their inclusion within these definitions would not provide additional clarity. Additionally, the definitions of ''development'' and ''production'' are being moved from within the definition of specially designed and made applicable to the entire ITAR, in part, to harmonize the definition of ''technical data'' with the definition of technology in the EAR. To modify these definitions would result in unnecessary variation from the EAR without significant benefit.

One commenter suggested that the Department add the Defense Federal Acquisition Regulations Supplement (DFARS) term ''advanced technological development'' to the definition of ''development.'' The Department notes the actual term is ''advanced technology development'' and does not make this change. While any advanced technology development would be included within this definition of ''development,'' the value of adding the DFARS term is outweighed by the loss of harmonization with the EAR and multilateral export control regimes.

One commenter suggested that the Department replace the term ''serial production'' with ''production.'' The Department does not make this change. Products generally pass through multiple phases of development, some of which may include the production of prototypes or prototype production facilities. All of these activities are included within the development phase of the products.

Several commenters noted that the definition of ''production'' includes manufacture and assert that this creates a conflict with the definitions of ''manufacturing license agreement'' (MLA) and ''technical assistance agreement'' (TAA) in §§ 120.21 and 120.22. The Department does not make any change. An MLA is an ''authorization to manufacture defense articles abroad. . . .'' There may be an agreement that involves technical data for the production of a defense article that is not an ''authorization to manufacture defense articles abroad,'' and in these instances, an MLA would not be required. However, in instances where there is an ''authorization to manufacture defense articles abroad'' that involves the export of technical data, an MLA is required regardless of the type of technical data exported. One commenter noted that the provisions of § 124.4(b)(1) through (4) apply to agreements that involve coproduction or licensed production outside of the United States of defense articles of United States origin, and asserts that the new definition of ''production'' may implicate some TAAs, in addition to MLAs. The commenter requested that § 124.4(b) be revised to limit the scope of that provision to ''licensed manufacturing.'' The Department does not make this change. The reporting requirements of § 124.4(b) apply only to ''coproduction or licensed production outside of the United States,'' which is only authorized via MLAs that involve offshore production. Additional revisions are not necessary.

One commenter stated that the definitions would undermine the utility of the exemption at § 125.4(b)(6), which authorizes the export of technical data ''related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information.'' The Department confirms that these definitions do not change the scope of this exemption.

In reviewing the definition of development from the 2015 proposed rule, and not in response to public comment, the Department determined to revise the final sentence of the definition to focus on design rather than items. This is intended to be in keeping with the attempt to better align definitions across the EAR and ITAR, as expressed in the 2015 proposed rule, and to clarify that development is common to pre-production for all goods and is not specific to the USML. Although the final sentence of the definition of development is not found directly in the EAR definition of development, an analogous provision is found in Note 2 to the definition of technology (see 15 CFR 772.1).

Adding in § 120.43(c) through (i) single instance definitions and explanations of terms for design methodology, engineering analysis, manufacturing know-how, build-to-print, build/design-to-specification, basic research, and applied research (the definition of which was formerly found within the definition of basic research and which this rule separates into two definitions), formerly found at §§ 124.2(c)(4) and 125.4(c). Although formerly described in §§ 124.2(c)(4) and 125.4(c), for purposes of clarity as to the application of an exemption the terms were used in other locations in the ITAR, demonstrating that the explanations were intended to have broader applicability. Conforming changes are made to citation references in Category XIII(i)(6) of § 121.1, Supplement No. 1 to part 126, and Note 5 and Note 12 to that supplement. In addition, revisions are made to existing § 124.2(c)(4) to eliminate the unnecessary duplication of definitions of design methodology, engineering analysis, and manufacturing know-how by deleting existing § 124.2(c)(4)(i) through (iii). Also, the parenthetical explanation of build-to-print at existing § 124.13(b) is removed for the same reason.

Section 120.57 Authorization Types

In § 120.57 consolidating and incorporating single instance definitions for the various authorization types for transactions subject to the ITAR (formerly found in §§ 120.20, 120.21, 120.22 and 120.23) and adding in § 120.57(c) a single instance definition of exemption to provide a single reference for the concept, used throughout the ITAR, for an authorization other than by license or other written approval.

Section 120.68 Party to the Export

Establishing in § 120.68 (formerly found at § 126.7(e)) a single instance definition of ''party to the export''.

Part 121 The United States Munitions List

Adding a new § 121.0 to provide cross-reference to §§ 120.10 and 120.11, Introduction to the U.S. Munitions List and Order of review, respectively (formerly found at paragraphs (a) and (b) of § 121.1). Removing and reserving paragraphs (a) and (b) of § 121.1. Revising for purpose of consistency only the technical data and defense service definition parentheticals in the technical data paragraphs for all categories previously revised as part of the multi-year process of reviewing and revising the USML as part of the USML to the Commerce Control List (CCL) process, beginning with 78 FR 22740, Apr. 16, 2013. These revisions are not intended to make any substantive change. Previously, these paragraphs used ''see'' and ''as defined in'' interchangeably. Removing from the USML those notes to category paragraphs that contain definitions for ''classified'' in order to preclude any variation from the definition of classified in § 120.38 (formerly found at § 120.46). Removing the parentheticals ''(see § 120.4 of this subchapter)'' relating to commodity jurisdiction, ''(see § 120.42 of this subchapter)'' relating to ''subject to the EAR'', and the phrase ''(see § 120.10(a)(2) of this subchapter)'' relating to ''classified'' as they are either used inconsistently or because they are generally understood by the regulated community and defined elsewhere in the regulations. Finally, cross-references to sections moved by this rule are updated.

Section 128.1 Exclusion of Functions From the Administrative Procedure Act

Revising § 128.1 to clarify that the Secretary of State has been delegated authority to make licensing decisions.

Section 128.2 Administrative Law Judge

Revising § 128.2 regarding authorities of an Administrative Law Judge to eliminate reference to § 127.7. This change clarifies that an Administrative Law Judge may only recommend debarment pursuant to that section, and any such order is issued by the Assistant Secretary of State for Political-Military Affairs.

Other Revisions

Removing and reserving § 120.26, Presiding Official, as unnecessary as the term does not otherwise appear in the regulations.

Removing the list of forms referenced in the ITAR and formerly found at § 120.28. This section, which provides the list of forms referred to in the ITAR, is being removed in its entirety as an unnecessary inclusion to the regulations. Due to previous revisions to the regulations, the list presented is not accurate. In order to prevent unnecessary regulatory activity in the form of future conforming revisions to the section, due to expected changes to the forms that appear in the regulations, it is being removed and the section reserved.

Reserving § 120.29 (formerly Missile Technology Control Regime) and moving the former text of § 120.29 to paragraph (d) of new § 120.23, Organizations and arrangements.

Reserving § 120.46 (formerly Classified) and moving the former text of § 120.46 to new § 120.38.

Reserving § 123.20 (formerly Nuclear related controls) and moving the former text of § 123.20 to new § 120.5(c).

Reserving § 123.26 (formerly Recordkeeping for exemptions) and moving the requirements of the former § 123.26 to new § 120.15(e).

Reserving § 125.6 (formerly Certification requirements for exemptions) and moving and revising the former text of § 125.6 as described in the discussion of § 120.15 above.

Reserving § 126.7 (formerly Denial, revocation, suspension, or amendment of licenses and other approvals) and moving the former text of § 126.7(a)–(d) and (e) to new §§ 120.18 and 120.68, respectively.

Reserving § 126.9 (formerly Advisory opinions and related authorizations) and moving the former text of § 126.9 to new § 120.22.

Reserving § 126.10 (formerly Disclosure of information) and moving the former text of § 126.10 to new § 120.21.

Reserving §§ 126.11 and 126.12 (formerly Relations to other provisions of law, and Continuation in force, respectively) and moving the former text of each to new § 120.7(a) and (b), respectively.

Removing in its entirety the MTCR Annex formerly found at § 121.16, as the relevant information of the MTCR Annex is conveyed directly through notations in the USML and to eliminate unnecessary sections of the ITAR and the obligation to amend to reflect revisions to the MTCR Annex in both the USML and in former § 121.16, in conjunction with the adoption of reference to the Missile Technology Control Regime in new § 120.23(d).

Revising references to ''U.S. Government'' from ''U.S. government'' at §§ 120.11(d), 120.18(a)(6), and 120.34(a)(7).

Revising order and numbering of notes to affected sections in accordance with Code of Federal Regulations drafting requirements.

Revising formatting of cites and signals wherever found for consistency of application.

The following former paragraphs of the ITAR were marked as reserved and are removed by this rule: §§ 120.27(a)(11), 120.27(b), and 125.4(d).

Definitions of general applicability from throughout the subchapter are consolidated in Part 120—Purpose and Definitions, Subpart C—Definitions. These movements are identified in the table below. Cross references are revised throughout the subchapter and efforts were made to standardize certain terminologies (*e.g.,* reference to ''subject to the ITAR'' revised to the more commonly used ''subject to this subchapter'') and in the use of abbreviations and acronyms.

This rule primarily moves and reorganizes existing regulatory text without revision. Much of this text was drafted at different times, by different authors. The Department intends to propose additional revisions to regulatory text to improve readability and flow.

The table below identifies to the sentence level all:

1. Movements or renumbering of text made by this rule from their former location to the location as effected by this rule. The former location of moved text is italicized.

2. All text revised in any manner by this rule, whether moved or not. Revised sections, paragraphs, and text locations appear in bold.

3. All text removed/reserved from the ITAR in any location. Removed sections, paragraphs, and text locations appear as strikethrough.

4. Any new general information text sections that are derived from an existing ITAR section which is not revised or removed are identified in the ''Model for'' column and the source material identified by underlined text.

5. Where a section or paragraph is moved, revised, and/or formed the basis for new text elsewhere, it is identified by each font type (*e.g.,* the text of § 123.26 is revised and moved and the section reserved, so it appears in the table as bold struck through text).

6. Each level (to the sentence) of any section affected by this rule is identified by a unique row and then by font type within the row. For example, the first six rows of the table identify changes to § 120.1. Row 1 shows § 120.1 in bold, indicating a change to the text of the section title. Row two shows paragraph (a) in bold, indicating a change to the text of that paragraph. Row three shows

paragraph (b) in bold, indicating a change to the text of that paragraph. Row four shows paragraph (1) under paragraph (b) in bold, indicating a change to the text of paragraph (b)(1). Row five shows paragraph (ii) in bold and paragraph (2) in regular text under paragraph (b), indicating a change in text to paragraph (b)(2)(ii), but no change to the text of paragraph (b)(2) itself. Finally, row six shows paragraph (c) in italic and underlined, indicating that the paragraph has been moved (but not revised) and relocated to post-rule location § 120.16 as well as providing the basis for new text at § 120.15(b). Subsequent rows show the new locations of paragraphs within prior § 120.1(c).

7. Where consecutive paragraphs within a section are affected in the same manner, they are combined into a single row. See, *e.g.,* § 120.9, where paragraph (a)(1) is in a single row and identified in italic as having been moved to § 120.32(a)(1), and paragraphs (a)(2) and (3) are in a single row and both identified in bold and italic as having been revised and moved to § 120.32(a)(2) and (3).

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Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
120.1										
	(a)									
	(b)									
		(1)								
		(2)	**(i)-(iii)**							
	(c)						120.16			120.15(a)
		(1)					120.16	(a) & (b)		
				1-2			120.16	(a)		
			(i)-(ii)				120.16	(a)(1)-(2)		
			(iii)				120.16	(a)(3)		
				3			120.16	(b)		
		(2)					120.16	(c)		
	(d)						120.15	(b)		
120.2										
120.3	**(a)**									
	(b)									
					to (a) and (b)		1 to (a) and (b)			
	(c)	**(1)-(2)**								
					to § 120.3					
120.4	**(a)**									
				4~~*-5*~~			120.12	(a)	1-2	
	(b)									
				1			120.12	(f)		
				~~*2*~~						
	(c)						120.12	(b)(3)		
	(d)	~~*(1)*~~								
		(2)					120.12	(b)		
			(i)-(ii)				120.12	(b)(1)-(2)		
		(3)					120.12	(c)		
			(i)-(ii)				120.12	(c)(1)-(2)		
					1 to (d)		120.42	(a)-(d)		
						1	120.42	(a)	1	
						2	120.42	(b)	1	
						3	120.42	(c)	1	
						4	120.42	(d)	1	
					2 to (d)		120.42	(a)-(d)		
						1	120.42	(a)	2	
						2	120.42	(b)	2	
						3	120.42	(c)	2	
						4	120.42	(c)	2	
	(e)						120.12	(d)		
	(f)						120.12	(a)	3	
	(g)						120.12	(e)		
120.5										
	(a)									
				7			120.5	(b)(1)		
				~~*8*~~			120.5	(c)		
	(b)						120.5	(b)(2)		
120.6							120.31			
				1			120.31	(a)		

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
				2			120.31	(c)		
				3			120.31	(a)(1)		
				4			120.31	(a)(2)		
				5			120.31	(b)		
120.7							120.36			
	(a)						120.36	(a)		
	(b)						120.36	(b)		
120.8							120.37			
120.9							120.32			
	(a)						120.32	(a)		
		(1)-(3)					120.32	(a)(1)-(3)		
	(b)						120.32	(b)		
120.10							120.33			
	(a)						120.33	(a)		
		(1)					120.33	(a)(1)		
		(2)					120.33	(a)(2)		
		(3)					120.33	(a)(3)		
		(4)					120.33	(a)(4)		
	(b)						120.33	(b)		
120.11							120.34			
	(a)	***(6)-(8)***					120.34	(a)(6)-(8)		
120.12							120.30			
120.13							120.60			
120.14							120.61			
120.15							120.62			
120.16							120.63			
120.17							120.50			
	(a)						120.50	(a)		
		(6)					120.50	(a)(6)		
120.18							120.53			
120.19							120.51			
	(a)						120.51	(a)		
		(2)					120.51	(a)(2)		
	(b)						120.51	(b)		
120.20							120.57			
				1			120.57	(a)		
				2			120.57	(b)		
120.21							120.57	(d)		
	(a)						120.57	(d)(1)		
	(b)						120.57	(d)(2)		
120.22							120.57	(e)		
120.23							120.57	(f)		
120.24							120.69			
120.25							120.67			
	(a)	**(3)**					120.67	(a)(3)		
~~120.26~~										
120.27							120.6			
	(a)						120.6			
		(1)-(3)					120.6	(a)-(c)		
		(4)					120.6	(c)		
		(5)-(10)					120.6	(e)-(j)		

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
		~~(11)~~								
		(12)-(14)					120.6	(k)-(q)		
		15					120.6	(n)		
		16-18					120.6	(o)-(q)		
	~~(b)~~									
~~120.28~~										
~~*120.29*~~							120.23	(d)		
	(a)-(c)						120.23	(d)(1)-(3)		
120.31							120.23	(a)		
120.32							120.23	(b)		
				1			120.23	(b)(1)		
				2-3			120.23	(b)(2)		
120.33							120.23	(e)		
120.34							120.23	(g)		
120.35							120.23	(f)		
120.36							120.23	(h)		
120.37							120.65			
				1			120.65	(a)		
				2-3			120.65	(b)		
120.38							120.45			
	(a)-(c)						120.45	(a)-(c)		
120.39							120.64			
	(a)						120.64	(a)		
120.40							120.66	(a)		
					to 120.40		120.66	(b)		
120.41	**(a)**									
		(1)-(2)								
					to (a)(1)		1 to (a)(1)			
	(b)	**(3)**								
			ii							
		(4)								
					to (a) and (b)		120.40	(a)		
					to (b)	***1***	120.42	(f)		
						2	120.42	(g)		
					1 to (b)(3)		120.43	(b)(1)		
					2 to (b)(3)		120.43	(a)		
					3 to (b)(3)		120.43(b)	(b)(2)		
					4 to (b)(3)		120.42			
						1	120.42	(a)	1	
						2	120.42	(b)	1	
						3	120.42	(c)	1	
						4	120.42	(d)	1	
						5	120.42	(a)	2	
						6	120.42	(b)	2	
						7	120.42	(c)	2	
						8	120.42	(d)	2	
					5 to (b)(3)		120.42	(e)		
					1 to (b)(4) and (5)		2 to (b)			
					2 to (b)(4) and (5)		3 to (b)			

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
120.42							120.58			
120.44							120.39			
120.45							120.40			
	(a)						120.40	(b)		
	(b)						120.40	(c)		
	(c)-(e)						120.40	(d)-(e)		
	(f)						120.40	(g)		
	(g)						120.40	(h)		
					to (g)		120.40(h)	Note to (h)		
	(h)						120.40	(i)		
120.46							120.38			
120.50							120.56			
	(a)						120.56	(a)		
120.51							120.52			
	(a)	***(1)***					120.52	(a)		
120.54										
	(a)	**(4)**								
120.56										
	(b)									
121.1										
	(a)						120.10	(a)		
		(1)					120.10	(b)		
		(2)					120.10	(c)		
		(3)					120.10	(d)		
	(b)						120.11			
				1			120.11	(a)		
		(1)					120.11	(a)(1)		
		(2)		***1-3***			120.11	(a)(2)		
		(2)		***4***			120.11	(b)(1)		
		(2)		*5*			120.11	(b)(2)		
		(2)		***6***			120.11	(d)		
Cat. I										
	(x)									
Cat. II										
					~~1 to (j)(17)~~					
	(k)									
	(x)									
Cat. III										
	(a)				**1 to (a)(10)**					
					~~1 to (d)(15)~~					
	(e)									
	(x)									
Cat. IV										
	(h)	(30)			~~to (h)(30)~~					
	(i)									
	(x)									
Cat. V										
	(h)	**(2)**								
					~~to (h)~~					
	(i)				**1 to (i)**					
	(j)									

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
	(x)									
Cat. VI										
	(b)	(4)			**to (b)(4)**					
	(c)				**1 to (c)**					
	(e)									
	(f)	**(5)**								
		(9)	**(iii)**	~~2~~						
	(g)									
	(x)									
Cat. VII										
	(c)				**to (c)**					
	(g)	(14)	(iii)	~~2~~						
	(h)									
	(x)									
Cat. VIII										
	(f)				**1 to (f)**					
	(h)	(20)			~~to (h)(20)~~					
	(i)									
	(x)									
Cat. IX										
	(a)	(11)			~~to (a)(11)~~					
	(b)	(5)			~~to (b)(5)~~					
	(e)	**(3)**								
	(x)									
Cat. X										
	(a)	(8)			**1 to (a)(8)**					
	(d)	(4)			~~to (d)(4)~~					
	(e)									
	(x)									
Cat. XI										
	(a)	(3)	(i)		**to (a)(3)(i)**					
			(xii)		**to (a)(3)(xii)**					
		(7)			**1 to (a)(7)**					
	(c)	(19)	**(iii)**							
					~~to (c)(19)~~					
					to (c)(19)(ii)					
	(d)									
	(x)									
Cat. XII										
	(b)	(7)			**1 to (b)(7)**					
	(c)	(10)			**1 to (c)(10)**					
	(d)	(6)			**1 to (d)(6)**					
	(e)	(23)			~~to (e)(23)~~					
		(24)			**1 to (e)(24)**					
	(f)									
	(x)									
					to Cat. XII					
Cat. XIII										
	(e)	(7)			**1 to (e)(7)**					

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
	(f)	**(iii)**								
	(i)	**(6)**								
	(l)									
	(x)									
Cat. XIV										
	(f)	(2)			**1 to (f)(2)**					
		(8)			~~to (f)(8)~~					
	(m)									
	(n)				**1 to (n)**					
	(x)				**to (x)**					
Cat. XV										
	(a)	(7)			**3 to (a)(7)**					
		(11)								
		(13)		~~2~~						
					2 to (a)					
	(e)	(18)			**1 to (e)(18)**					
		(21)			~~to (e)(21)~~					
	(f)									
	(x)									
Cat. XVI										
	(e)									
	(x)									
Cat. XVII										
	(a)									
Cat. XVIII										
	(f)				**1 to (f)**					
	(g)									
	(x)				**to (x)**					
Cat. XIX										
	(f)	(6)			~~to (f)(6)~~					
	(g)									
	(x)									
					to (x)					
Cat. XX										
	(a)	(7)			**to (a)(7)**					
		(8)			**1 to (a)(8)**					
	(b)	**(1)**								
	(d)									
	(x)									
Cat. XXI										
	(a)									
	(b)									
~~121.16~~										
122.1	(a)	(1)		1						120.13(a)
	(b)				to (b)					120.15(a)
122.2	**(a)**									
	(b)	(1)	**(i)**							
		(2)								

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
122.4	(a)	**(1)**								
	(b)									
123.1	(a)			1						120.14(a)
	(b)									
	(d)									
123.4	(c)	**(1)**								
123.9	(b)	**(2)**								
123.15	**(a)**									
		(3)								
123.16	**(a)**									120.15(c)-(d)
		(4)								
		(9)								
123.17	**(k)**									
~~123.20~~										
	(a)						120.5	(c)(1)		
	(b)						120.5	(c)(2)		
	(c)						120.5	(c)(3)		
		(1)-(3)					120.5	(c)(3)(i)-(iii)		
~~123.26~~							120.15	(e)		
123.27	(a)	**(1)**								
124.1	**(a)**									
				1						120.14b
124.2	**(b)**									
	(c)	**(4)**								
124.11	**(a)**									
124.13	**(b)**									
				2			120.43	(f)		
				3			120.43	(f)		
125.1	**(a)**									
	(e)									
125.4	**(a)**									
	(c)									
		(1)					120.43	(f)		
		(2)					120.43	(g)		
		(3)		**1-2**			120.43	(h)		
				3-4			120.43	(i)		
		(4)					120.43	(c)		
		(5)					120.43	(d)		
		(6)					120.43	(e)		
	~~(d)~~									
~~125.6~~										
	(a)						120.15	(f)		
	(b)						120.15	(f)		
126.1	(c)	**(1)**								
126.5	**(a)**									
	(b)									
~~126.7~~							120.18			
	(a)						120.18	(a)		
		(1)					120.18	(a)(1)		

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
		(2)-(4)					120.18	(a)(2)-(4)		
		(5)					120.18	(a)(5)		
		(6)					120.18	(a)(6)		
		(7)					120.18	(a)(7)		
		(8)					120.18	(a)(8)		
	(b)						120.18	(b)		
	(c)						120.18	(c)		
	(d)						120.18	(d)		
	(e)						120.68	(a)		
		(1)					120.68	(a)(1)		
		(2)-(3)					120.68	(a)(2)-(3)		
~~*126.9*~~							120.22			
	(a)-(c)						120.22	(a)-(c)		
~~*126.10*~~							120.21			
	(a)						120.21	(a)		
	(b)						120.21	(b)		
	(c)						120.21	(c)		
	(d)						120.21	(d)		
		(1)-(2)					120.21	(d)(1)-(2)		
~~*126.11*~~							120.7	(a)		
~~*126.12*~~							120.7	(b)		
126.13	(a)	**(1)**								
		(3)								
126.16	(g)	**(1)**								
	(o)	(1)	**(iii)**							
126.17	(g)	**(1)**								
	(o)	(1)	**(iii)**							
126.18	**(a)**									
	(b)									
Supp. 1 to part 126	**Entry 14 "I-XXI"**									
					Note 5					
					Note 12					
127.1	**(d)**									
127.11	**(a)**									
127.12	**(a)**									
				1						120.19(b)
	(c)	(1)	**(i)-(ii)**							
	(e)									
128.1										120.20
128.2										
129.2	**(a)**									
		(1)-(2)								
	(b)	(2)	**(iii)**							
			(v)-(vi)							
129.3	(a)									120.13(b)
	(d)									
129.4	(a)			1						120.14(c)
		(1)								
129.5	**(b)**									

Prior Section	Level 1	Level 2	Level 3	Sentence	Note (#) to paragraph/ section	Sentence	Post Rule Location	Level	Sentence	Model for
	(c)	**(2)**								
129.6	(a)	(2)	**(i)**							
			(iii)							
129.8	**(a)**									
	(c)	(1)	**(i)**							
		(2)								
	(d)	**(1)**								
130.4										

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Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a military or foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this interim final rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as an interim final rule and with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this interim final rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rulemaking has been found not to be a major rule within the definition of Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Although the Department is of the opinion that this rulemaking is exempt from Executive Order 12866 as this rule pertains to a military or foreign affairs function of the United States as provided in Section 3(d)(2), the Department nevertheless has determined that, given the nature of the amendments made in this rulemaking, there will be no change to any person's substantive rights or obligations as a result of this rule, and the only cost to the public, the cost of updating compliance regimes to account for the movement of regulatory text within the ITAR, is less than the benefit to the public in the increased utility of the ITAR. Therefore, the benefits of this rulemaking outweigh the cost. This rule has been designated a ''significant regulatory action,'' although not economically significant, by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 120, 121, and 125

Arms and munitions, Classified information, Exports.

22 CFR Parts 122 and 123

Arms and munitions, Exports, Reporting and recordkeeping.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 128

Administrative practice and procedure, Arms and munitions, Exports.

22 CFR Part 129

Arms and munitions, Brokers, Exports.

22 CFR Part 130

Arms and munitions, Campaign funds, Confidential business information, Exports, Reporting and recordkeeping requirements.

Amendatory Instructions

Accordingly, for the reasons set forth above and under the authority of 22 U.S.C. 2778, and 22 U.S.C. 2779, the Department of State amends title 22, chapter I, subchapter M, parts 120 through 130 as follows:

■ 1. Part 120 is revised to read as follows:

PART 120—PURPOSE AND DEFINITIONS

Subpart A—General Information

Sec.

120.1 General authorities.
120.2 Designation of defense articles and defense services.
120.3 Policy on designating or determining defense articles and services on the U.S. Munitions List.
120.4 Commodity jurisdiction.
120.5 Relation to regulations of other agencies.
120.6 U.S. criminal statutes.
120.7 Relations to other provisions of law.
120.8–120.9 [Reserved]

Subpart B—General Policies and Processes

120.10 Introduction to the U.S. Munitions List.
120.11 Order of review.
120.12 Commodity jurisdiction determination requests.
120.13 Registration.
120.14 Licenses and related authorizations.
120.15 Exemptions.
120.16 Eligibility for approvals.
120.17 End-use monitoring.
120.18 Denial, revocation, suspension, or amendment of licenses and other approvals.
120.19 Violations and penalties.
120.20 Administrative procedures.
120.21 Disclosure of information.
120.22 Advisory opinions and related authorizations.
120.23 Organizations and arrangements.
120.24–120.29v [Reserved]

Subpart C—Definitions

120.30 Directorate of Defense Trade Controls.
120.31 Defense article.
120.32 Defense service.
120.33 Technical data.
120.34 Public domain.
120.35 [Reserved]
120.36 Significant military equipment.
120.37 Major defense equipment.
120.38 Classified.
120.39 Foreign defense article or defense service.
120.40 Compositional terms.
120.41 Specially designed.
120.42 Form, fit, function, performance capability, equivalent, enumerated, and catch-all control.
120.43 Development, production, and related terms; Basic and applied research.
120.44 [Reserved]
120.45 Maintenance levels.
120.46–120.49 [Reserved]
120.50 Export.
120.51 Reexport.
120.52 Retransfer.
120.53 Temporary import.
120.54 Activities that are not exports, reexports, retransfers, or temporary imports.
120.55 Access information.
120.56 Release.
120.57 Authorization types.
120.58 Subject to the Export Administration Regulations (EAR).
120.59 [Reserved]
120.60 United States.
120.61 Person.
120.62 U.S. person.
120.63 Foreign person.
120.64 Regular employee.
120.65 Foreign ownership and foreign control.
120.66 Affiliate.
120.67 Empowered official.
120.68 Party to the export.
120.69 Port Directors.

Authority: 22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

Subpart A—General Information

§ 120.1 General authorities.

(a) *Authority and delegation.* Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services is delegated to the Secretary of State by Executive Order 13637. This subchapter implements that authority, as well as other relevant authorities in the Arms Export Control Act (22 U.S.C. 2751 *et seq.*). The Secretary of State delegates the authority to administer the regulations in this subchapter to the Deputy Assistant Secretary of State for Defense Trade Controls, Bureau of Political-Military Affairs.

(b) *Authorized officials.* (1) All authorities administered by the Deputy Assistant Secretary of State for Defense Trade Controls pursuant to this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs.

(2) The Deputy Assistant Secretary of State for Defense Trade Controls supervises the Directorate of Defense Trade Controls, which is comprised of the following offices:

(i) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other approvals of defense trade, including references under this part and parts 123, 124, 125, 126, 129, and 130 of this subchapter.

(ii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128, and 130 of this subchapter, and those portions under this part and part 129 of this subchapter pertaining to registration.

(iii) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under this part and part 126 of this subchapter, and the commodity jurisdiction procedure under this part.

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of import or export controls. The President has delegated to the Secretary of State the authority to control the export and temporary import of defense articles and services. The items designated by the Secretary of State for purposes of export and temporary import control constitute the U.S. Munitions List (USML) specified in part 121 of this subchapter. Defense articles on the USML specified in part 121 of this subchapter that are also subject to permanent import control by the Attorney General on the U.S. Munitions Import List enumerated in 27 CFR part 447 are subject to temporary import controls administered by the Secretary of State. Designations of defense articles and defense services on the USML in part 121 of this subchapter are made by the Department of State with the concurrence of the Department of Defense. The scope of the USML shall

be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778). For a designation or determination on whether a particular item is enumerated on the USML, *see* § 120.4.

§ 120.3 Policy on designating or determining defense articles and services on the U.S. Munitions List.

(a) For purposes of this subchapter, a specific article or service may be designated a defense article (see § 120.31) or defense service (see § 120.32) if it:

(1) Meets the criteria of a defense article or defense service on the U.S. Munitions List (USML) (part 121 of this subchapter); or

(2) Provides the equivalent performance capabilities of a defense article on the USML.

(b) For purposes of this subchapter, a specific article or service shall be determined in the future as a defense article or defense service if it provides a critical military or intelligence advantage such that it warrants control under this subchapter.

Note 1 to paragraphs (a) and (b): An article or service determined in the future pursuant to this subchapter as a defense article or defense service, but not currently on the USML, will be placed in Category XXI of § 121.1 of this subchapter until the appropriate category of the USML has been amended to provide the necessary entry.

(c) A specific article or service is not a defense article or defense service for purposes of this subchapter if it:

(1) Is determined to be under the jurisdiction of another department or agency of the U.S. Government (see § 120.5) pursuant to a commodity jurisdiction determination (see § 120.4) unless superseded by changes to the USML or by a subsequent commodity jurisdiction determination; or

(2) Meets one of the criteria of § 120.41(b) when the article is used in or with a defense article and specially designed is used as a control criteria.

Note 2 to § 120.3: The intended use of the article or service after its export (*i.e.,* for a military or civilian purpose), by itself, is not a factor in determining whether the article or service is subject to the controls of this subchapter.

§ 120.4 Commodity jurisdiction.

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List (USML). It may also be used for consideration of a redesignation of an article or service currently covered by the USML. The Department must provide notice to Congress at least 30 days before any item is removed from the USML.

(b) The procedure for submitting a Commodity Jurisdiction Determination Request to the Directorate of Defense Trade Controls is set forth in § 120.12.

§ 120.5 Relation to regulations of other agencies.

(a) *The Department of Justice, the U.S. Munitions Import List (USMIL), and permanent imports.* Defense articles and defense services covered by the U.S. Munitions List set forth in this subchapter are regulated by the Department of State (see also § 120.2) for purposes of export, reexport, retransfer, and temporary import. The President has delegated the authority to control the permanent import of defense articles and services to the Attorney General. The defense articles and services controlled by the Secretary of State and the Attorney General collectively comprise the U.S. Munitions List under the Arms Export Control Act. As the Attorney General exercises independent delegated authority to designate defense articles and services for purposes of permanent import controls, the permanent import control list administered by the Department of Justice has been separately labeled the U.S. Munitions Import List (27 CFR part 447) to distinguish it from the list set out in this subchapter. In carrying out the functions delegated to the Attorney General pursuant to the Arms Export Control Act, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace and the external security and foreign policy of the United States.

(b) *The Department of Commerce and the Export Administration Regulations*—(1) *Export of items subject to the Export Administration Regulations by authority of the Department of Commerce.* The Department of Commerce regulates the export, reexport, and in-country transfer of items on the Commerce Control List and other items subject to its jurisdiction, as well as certain activities performed by U.S. persons, including those that may contribute to the proliferation of weapons of mass destruction, under the Export Administration Regulations (EAR) (15 CFR parts 730 through 774).

(2) *Export of items subject to the EAR by authority of the Department of State.* A license or other approval (*see* § 120.57) from the Department of State granted in accordance with this subchapter may also authorize the export of items subject to the EAR (*see* § 120.58). An exemption (*see* § 120.57 and parts 123, 124, 125, and 126 of this subchapter) may only be used to export an item subject to the EAR that is for use in or with a defense article and is included in the same shipment as any defense article. Separate approval from the Department of Commerce is not required for these items. No exemption under this subchapter may be utilized to export an item subject to the EAR if not accompanied by a defense article. Those items subject to the EAR exported pursuant to a Department of State license or other approval would remain under the jurisdiction of the Department of Commerce for any subsequent transactions. The inclusion of items subject to the EAR on a Department of State license or other approval does not change the licensing jurisdiction of the items.

(c) *Nuclear related controls; Department of Energy and the Nuclear Regulatory Commission.* (1) The provisions of this subchapter do not apply to articles, technical data, or services in Category VI, Category XV, Category XVI, and Category XX of § 121.1 of this subchapter to the extent that exports of such articles, technical data, or services are controlled by the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954 (AEA), as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts. For Department of Commerce controls, see 15 CFR 742.3 and 744.2, administered pursuant to Section 309(c) of the Nuclear Nonproliferation Act of 1978, as amended (42 U.S.C. 2139a(c)), and 15 CFR 744.5, which are not subject to this subchapter.

(2) The transfer of materials, including special nuclear materials, nuclear parts of nuclear weapons, or other, non-nuclear parts of nuclear weapons systems involving Restricted Data or of assistance involving any person directly or indirectly engaging in the production or use thereof is prohibited except as authorized by the AEA. The transfer of Restricted Data or such assistance is prohibited except as authorized by the AEA. The technical data or defense services relating to nuclear weapons, nuclear weapons systems or related defense purposes (and such data or services relating to applications of atomic energy for peaceful purposes, or related research and development) may constitute Restricted Data or such assistance, subject to the foregoing prohibition.

(3) A license for the export of a defense article, technical data, or the furnishing of a defense service relating to defense articles referred to in

Category VI(e) or Category XX(b)(1) of § 121.1 of this subchapter will not be granted unless the defense article, technical data, or defense service comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the AEA with the government of the country to which the defense article, technical data, or defense service is to be exported. Licenses may be granted in the absence of such an agreement only:

(i) If the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant;

(ii) If the proposed export has no relationship to naval nuclear propulsion; and

(iii) If it is not for use in a naval propulsion plant.

§ 120.6 U.S. criminal statutes.

For purposes of this subchapter, the phrase *U.S. criminal statutes* comprises the following:

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(b) Section 1760 of the Export Control Reform Act of 2018 (50 U.S.C. 4819) or section 11 of the Export Administration Act of 1979 (50 U.S.C. 4610);

(c) Section 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or section 2332d, 2339A, 2339B, 2339C, or 2339D of such title (relating to financial transactions with the government of a country designated as a country supporting international terrorism, providing material support to terrorists or terrorist organizations, financing of terrorism, or receiving military-type training from a foreign terrorist organization);

(d) Section 16 of the Trading with the Enemy Act (50 U.S.C. 4315);

(e) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

(f) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2 or 78dd–3);

(g) Chapter 105 of title 18, United States Code (relating to sabotage);

(h) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(a));

(i) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(j) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(k) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the statutes listed in this section);

(l) Sections 3, 4, 5, and 6 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 sections 6903–6906, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal services (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175c);

(m) Sections 2779 and 2780 of title 22, United States Code (relating to fees of military sales agents and other payments, and transactions with countries supporting acts of international terrorism);

(n) Section 542 of title 18, United States Code (relating to the entry of goods by means of false statements), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act (AECA) or International Traffic in Arms Regulations (ITAR) in this subchapter;

(o) Section 545 of title 18, United States Code (relating to smuggling goods into the United States), where the underlying offense involves a defense article, including technical data, or violations related to the AECA or ITAR;

(p) Section 554 of title 18, United States Code (relating to smuggling goods from the United States), where the underlying offense involves a defense article, including technical data, or violations related to the AECA or ITAR; and

(q) Section 1001 of title 18, United States Code (relating to false statements or entries generally), Section 1831 of title 18, United States Code (relating to economic espionage), and Section 1832 of title 18, United States Code (relating to theft of trade secrets) where the underlying offense involves a defense article, including technical data, or violations related to the AECA or ITAR.

§ 120.7 Relations to other provisions of law.

(a) The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of Justice. The performance of defense services on behalf of foreign governments by retired military personnel continues to require consent pursuant to part 3a of this title. Persons who intend to export defense articles or furnish defense services should not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

(b) All determinations, authorizations, licenses, approvals of contracts and agreements, and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked, or superseded by the Department of State.

§§ 120.8–120.9 [Reserved]

Subpart B—General Policies and Processes

§ 120.10 Introduction to the U.S. Munitions List.

(a) *The U.S. Munitions List.* The articles, services, and related technical data designated as defense articles or defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act appear in part 121 of this subchapter and constitute the U.S. Munitions List (USML). Changes in designations are published in the **Federal Register**. Paragraphs (b) through (d) of this section describe or explain the elements of a USML category.

(b) *Composition of U.S. Munitions List categories.* USML categories are organized by paragraphs and subparagraphs identified alphanumerically. They usually start by enumerating or otherwise describing end-items, followed by major systems and equipment; parts, components, accessories, and attachments; and technical data and defense services directly related to the defense articles of that USML category.

(c) *Significant Military Equipment paragraphs in the USML.* All items described within a USML paragraph or subordinate paragraph that is preceded by an asterisk (*) are designated Significant Military Equipment (SME). Note that technical data directly related to the manufacture or production of a defense article designated as SME is also designated as SME.

(d) *Missile Technology Control Regime (MTCR) designation.* Annotation with the parenthetical (MT) at the end of a USML entry indicates those defense articles that are on the MTCR Annex.

§ 120.11 Order of review.

(a) *Control.* Articles are controlled on the U.S. Munitions List (USML) because they are either:

(1) Enumerated in a category; or

(2) Described in a catch-all paragraph that incorporates specially designed as a

control parameter. In order to classify an item on the USML, begin with a review of the general characteristics of the item. This should guide you to the appropriate category, whereupon you should attempt to match the particular characteristics and functions of the article to a specific entry within that category.

(b) *Specially designed.* (1) If the entry includes the term specially designed, refer to § 120.41 to determine if the article qualifies for one or more of the exclusions articulated in § 120.41(b).

(2) An item described in multiple entries should be categorized according to an enumerated entry rather than a specially designed catch-all paragraph.

(c) *Integration of controlled items.* Defense articles described on the USML are controlled and remain subject to this subchapter following incorporation or integration into any item not described on the USML, unless specifically provided otherwise in this subchapter.

(d) *Other controls.* In all cases, articles not controlled on the USML may be subject to another U.S. Government regulatory agency (see § 120.5, and Supplement No. 4 to part 774 of the Export Administration Regulations (EAR) in title 15 of the CFR for guidance on classifying an item subject to the EAR).

§ 120.12 Commodity jurisdiction determination requests.

(a) Upon electronic submission of a Commodity Jurisdiction Determination Form (Form DS–4076), the Directorate of Defense Trade Controls (DDTC) shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List in part 121 of this subchapter. The determination, consistent with §§ 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce, and other U.S. Government agencies and industry in appropriate cases. State, Defense, and Commerce will resolve commodity jurisdiction determination disputes in accordance with established procedures. State shall notify Defense and Commerce, and other U.S. Government agencies as appropriate, of the initiation and conclusion of each case.

(b) A determination that an article or service meets the criteria of a defense article or defense service, or provides the equivalent performance capabilities of a defense article on the U.S. Munitions List, is made on a case-by-case basis, taking into account:

(1) The form and fit of the article;

(2) The function and performance capability of the article; and

(3) Other applicant-provided information, to include a history of the product's design, development, and use, as well as specifications and any other relevant data as described in brochures and other related documents.

(c) A determination that an article or service has a critical military or intelligence advantage such that it warrants control under Category XXI of § 121.1 of this subchapter is made, on a case-by-case basis, taking into account:

(1) The function and performance capability of the article; and

(2) The nature of controls imposed by other nations on such items (including the Wassenaar Arrangement and other multilateral controls).

(d) DDTC will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction determination. If after 45 days DDTC has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Office of Defense Trade Controls Policy that this determination be given expedited processing.

(e) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Deputy Assistant Secretary of State for Defense Trade Controls. The Deputy Assistant Secretary's determination of the appeal will be provided, in writing, within 30 days of receipt of the appeal. If desired, an appeal of the Deputy Assistant Secretary's decision can then be made to the Assistant Secretary of State for Political-Military Affairs.

(f) Registration with DDTC as described in part 122 of this subchapter is not required prior to submission of a commodity jurisdiction determination request.

§ 120.13 Registration.

(a) Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls as set forth in part 122 of this subchapter. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting or temporarily importing a defense article or furnishing a defense service. A manufacturer who does not engage in exporting must nevertheless register.

(b) Any U.S. person; foreign person located in the United States; or foreign person located outside the United States that is owned or controlled by a U.S. person, who engages in brokering activities is required to register with the Directorate of Defense Trade Controls as set forth in part 129 of this subchapter.

§ 120.14 Licenses and related authorizations.

(a) *Export, reexport, retransfer, or temporary import, of defense articles.* The approval of the Directorate of Defense Trade Controls (DDTC) must be requested and obtained before the export, reexport, retransfer, or temporary import of a defense article, unless an exemption under the provisions of this subchapter is applicable.

(b) *Furnishing defense services.* The approval of DDTC must be requested and obtained before a defense service may be furnished, unless an exemption under the provisions of this subchapter is applicable.

(c) *Brokering activities.* The approval of DDTC must be requested and obtained before engaging in the business of brokering activities for the defense articles described in § 129.4(a) of this subchapter by a person who is required to register as a broker under part 129 of this subchapter, unless an exemption under the provisions of part 129 is applicable.

§ 120.15 Exemptions.

(a) Persons otherwise required to register with the Directorate of Defense Trade Controls in accordance with this subchapter must do so prior to utilization of an exemption.

(b) Exemptions provided in this subchapter may not be utilized for transactions in which the exporter, any party to the export, any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible as set forth in § 120.16, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

(c) Exemptions provided in this subchapter do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons identified in § 126.1 of this subchapter, except as provided in § 126.1.

(d) Each exemption provided in this subchapter is subject to limitation as described in the section or paragraph of this subchapter in which the exemption is prescribed.

(e) Any person engaging in any export, reexport, transfer, or retransfer of a defense article or defense service pursuant to an exemption must maintain records of each such export, reexport, transfer, or retransfer. The records shall, to the extent applicable to the transaction and consistent with the

requirements of § 123.22 of this subchapter, include the following information: A description of the defense article, including technical data, or defense service; the name and address of the end-user and other available contact information (*e.g.,* telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end-use of the defense article or defense service; the date of the transaction; the Electronic Export Information (EEI) Internal Transaction Number (ITN); and the method of transmission. The person using or acting in reliance upon the exemption shall also comply with any additional recordkeeping requirements enumerated in the text of the regulations concerning such exemption (*e.g.,* requirements specific to the Defense Trade Cooperation Treaties in §§ 126.16 and 126.17 of this subchapter).

(f) To claim an exemption for the export of technical data under the provisions of this subchapter (*e.g.,* §§ 125.4 and 125.5 of this subchapter), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subordinate paragraph. Certifications consist of clearly marking the package or letter containing the technical data ''22 CFR [insert ITAR exemption] applicable.'' This certification must be made in written form and retained in the exporter's files for a period of 5 years. For exports that are oral, visual, or electronic the exporter must also complete a written certification and retain it for a period of 5 years.

§ 120.16 Eligibility for approvals.

(a) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

(1) A foreign governmental entity in the U.S. may receive a license or other approval;

(2) A foreign person may receive a reexport or retransfer approval; or

(3) A foreign person may receive an approval for brokering activities.

(b) A request for a license or other approval by a U.S. person or by a person referred to in paragraphs (a)(1) and (3) of this section will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(c) Persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.6, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (*e.g.,* charged by criminal information in lieu of indictment) with violating the U.S. criminal statutes enumerated in § 120.6, who are ineligible to contract with or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a publicly announced Department of State policy of denial, suspension, or revocation under § 120.18(a), are generally ineligible to be involved in activities regulated under this subchapter.

§ 120.17 End-use monitoring.

(a) Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2785) and related delegations of authority, the Department of State is required to establish a monitoring program in order to improve accountability with respect to defense articles and defense services, sold, leased, or exported under Department of State licenses or other approvals under section 38 of the Arms Export Control Act and this subchapter.

(b) All exports of defense articles, technical data, services, and brokering activities made pursuant to this subchapter are subject to end-use monitoring by the Department of State through the Blue Lantern program.

§ 120.18 Denial, revocation, suspension, or amendment of licenses and other approvals.

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States. Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

(1) The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Regulations in 15 CFR parts 730 through 774) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of a criminal complaint, other criminal charge (*e.g.,* an information), or indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.6; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.6; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. Government (*e.g.,* pursuant to an order denying export privileges issued by the Department of Commerce under 15 CFR part 766 or by the Department of State under part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application, exemption, or other request for approval under this subchapter, or as required in the instructions in the applicable Department of State form or has failed to provide notice or information as required under this subchapter; or

(8) An applicant is subject to sanctions under other relevant U.S. laws (*e.g.,* the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101–510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484)); or

(9) Any person involved in the transaction has been the subject of an unfavorable finding of an end-use monitoring check as described in § 120.17.

(b) *Notification.* The Directorate of Defense Trade Controls will notify applicants or licensees or other appropriate U.S. persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse

decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Directorate of Defense Trade Controls.

(d) *Reconsideration of certain applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the 30 day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

§ 120.19 Violations and penalties.

(a) Part 127 of this subchapter specifies conduct that constitutes a violation of the Arms Export Control Act (AECA) and/or the International Traffic in Arms Regulations in this subchapter and the sanctions that may be imposed for such violations.

(b) The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons that believe they may have violated any export control provision of the AECA, or any regulation in this subchapter, order, license, or other authorization issued under the authority of the AECA.

§ 120.20 Administrative procedures.

The Arms Export Control Act (AECA) authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. Pursuant to delegated authorities, the Secretary of State is authorized to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. The Secretary of State is also authorized to revoke, suspend, or amend licenses or other written approvals whenever such action is deemed to be advisable. The administration of the AECA is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the AECA, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

§ 120.21 Disclosure of information.

(a) *Freedom of information.* Subchapter R of this title contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Directorate of Defense Trade Controls.

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e)) provides that information obtained for the purpose of consideration of, or concerning, license applications shall be withheld from public disclosure unless the release of such information is determined by the Secretary of State to be in the national interest. Section 38(e) of the AECA further provides that the names of countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless certain determinations are made that the release of such information would be contrary to the national interest. Such determinations required by section 38(e) shall be made by the Assistant Secretary of State for Political-Military Affairs.

(c) *Information required under part 130 of this subchapter.* Part 130 contains specific provisions on the disclosure of information described in that part.

(d) *National interest determinations.* In accordance with section 38(e) of the AECA, the Secretary of State has determined that the following disclosures are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

(2) Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (*e.g.,* the Missile Technology Control Regime, the Australia Group, and Wassenaar Arrangement).

§ 120.22 Advisory opinions and related authorizations.

(a) *Preliminary authorization determinations.* A person may request information from the Directorate of Defense Trade Controls (DDTC) as to whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. Such information from DDTC is issued on a case-by-case basis and applies only to the particular matters presented to DDTC. These opinions are not binding on the Department of State and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved.

(b) *Related authorizations.* DDTC may, as appropriate, in accordance with the procedures set forth in paragraph (a) of this section, provide export authorization, subject to all other relevant requirements of this subchapter, both for transactions that have been the subject of advisory opinions requested by prospective U.S. exporters, or for the Directorate's own initiatives. Such initiatives may cover pilot programs, or specifically anticipated circumstances for which the Directorate considers special authorizations appropriate.

(c) *Interpretations of the International Traffic in Arms Regulations in this subchapter.* Any person may request an interpretation of the requirements set forth in this subchapter in the form of an advisory opinion. A request for an advisory opinion must be made in writing. Any response to an advisory opinion provided by DDTC pursuant to this paragraph (c) shall not be an authorization to export and shall not bind the Department to grant or deny any such authorization.

§ 120.23 Organizations and arrangements.

(a) *North Atlantic Treaty Organization.* North Atlantic Treaty Organization (NATO) refers to the organization of member states that are parties to the North Atlantic Treaty, which members include: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom, the United States, and any state not included here that has deposited an instrument of accession in accordance with Article 10 of the North Atlantic Treaty.

(b) *Major non-NATO ally.* (1) Major non-NATO ally, as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)), means a country that is designated in accordance with section 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k) as a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control

Act (22 U.S.C. 2151 *et seq.* and 22 U.S.C. 2751 *et seq.*).

(2) The following countries are designated as major non-NATO allies: Afghanistan (see § 126.1(g) of this subchapter), Argentina, Australia, Bahrain, Brazil, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, the Republic of Korea, Thailand, and Tunisia. Taiwan shall be treated as though it were designated a major non-NATO ally.

(c) *Wassenaar Arrangement.* (1) The Wassenaar Arrangement refers to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies among the United States, Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom, established on 12 July 1996, to promote transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies.

(2) The term Wassenaar Munitions List (WAML) refers to the list of military items for which all participants have agreed to maintain national export controls.

(d) *Missile Technology Control Regime*—(1) *Regime.* Missile Technology Control Regime (MTCR) refers to the policy statement among the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(2) *MTCR Annex.* The term MTCR Annex refers to the MTCR Guidelines and the Equipment, Software and Technology Annex of the MTCR, and any amendments thereto.

(3) *List of all items on the MTCR Annex.* MTCR Annex items specified in the U.S. Munitions List shall be annotated by the parenthetical (MT) at the end of each applicable paragraph.

(e) *Defense Trade Cooperation Treaty between the United States and Australia.* Defense Trade Cooperation Treaty between the United States and Australia refers to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007. For additional information on making exports pursuant to this treaty, see § 126.16 of this subchapter.

(f) *Australia Implementing Arrangement.* Australia Implementing Arrangement refers to the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Washington, March 14, 2008, as it may be amended.

(g) *Defense Trade Cooperation Treaty between the United States and the United Kingdom.* Defense Trade Cooperation Treaty between the United States and the United Kingdom refers to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London, June 21 and 26, 2007. For additional information on making exports pursuant to this treaty, see § 126.17 of this subchapter.

(h) *United Kingdom Implementing Arrangement.* United Kingdom Implementing Arrangement refers to the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington, February 14, 2008, as it may be amended.

§§ 120.24–120.29 [Reserved]

Subpart C—Definitions

§ 120.30 Directorate of Defense Trade Controls.

Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Washington, DC 20522–0112.

§ 120.31 Defense article.

(a) *Defense article* means any item or technical data designated in § 121.1 of this subchapter and includes:

(1) Technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter; and

(2) Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles.

(b) It does not include basic marketing information on function or purpose or general system descriptions.

(c) The policy described in § 120.3 is applicable to designations of additional items.

§ 120.32 Defense service.

(a) *Defense service* means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles;

(2) The furnishing to foreign persons of any technical data controlled under this subchapter, whether in the United States or abroad; or

(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

(b) [Reserved]

§ 120.33 Technical data.

(a) *Technical data* means for purposes of this subchapter:

(1) Information, other than software as defined in § 120.40(g), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation;

(2) Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

(3) Information covered by an invention secrecy order; or

(4) Software (see § 120.40(g)) directly related to defense articles.

(b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in § 120.34 or telemetry data as defined in note 3 to Category XV(f) of § 121.1 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

§ 120.34 Public domain.

(a) *Public domain* means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents available at any patent office;

(6) Through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States;

(7) Through public release (*i.e.,* unlimited distribution) in any form (*e.g.,* not necessarily in published form) after approval by the cognizant U.S. Government department or agency (see also § 125.4(b)(13) of this subchapter); or

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity; or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

(b) [Reserved]

§ 120.35 [Reserved]

§ 120.36 Significant military equipment.

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Significant military equipment includes:

(1) Items in § 121.1 of this subchapter that are preceded by an asterisk; and

(2) All classified articles enumerated in § 121.1 of this subchapter.

§ 120.37 Major defense equipment.

Major defense equipment, pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6)), means any item of significant military equipment on the U.S. Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000.

§ 120.38 Classified.

Classified means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

§ 120.39 Foreign defense article or defense service.

Foreign defense article or defense service means any article or service described on the U.S. Munitions List of non-U.S. origin. Unless otherwise provided in this subchapter, the terms defense article and defense service refer to both U.S. and foreign origin defense articles and defense services described on the U.S. Munitions List. A defense article or defense service is determined exclusively in accordance with the Arms Export Control Act and this subchapter, regardless of any designation (either affirming or contrary) that may be attributed to the same article or service by any foreign government or international organization.

§ 120.40 Compositional terms.

(a) *Commodity* means any article, material, or supply, except technology/technical data or software.

(b) An *end-item* is a system, equipment, or an assembled article ready for its intended use. Only ammunition or fuel or other energy source is required to place it in an operating state.

(c) A *component* is an item that is useful only when used in conjunction with an end-item:

(1) A *major component* includes any assembled element that forms a portion of an end-item without which the end-item is inoperable; and

(2) A *minor component* includes any assembled element of a major component.

(d) *Accessories and attachments* are associated articles for any component, equipment, system, or end-item, and which are not necessary for its operation, but which enhance its usefulness or effectiveness.

(e) A *part* is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of designed use.

(f) *Firmware* and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions, and system test diagnostics) directly related to equipment or systems covered under any category of the U.S. Munitions List are considered as part of the end-item or component. Firmware includes but is not limited to circuits into which software has been programmed.

(g) *Software* includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems, and support software for design, implementation, test, operation, diagnosis, and repair. A person who intends to export only software should, unless it is specifically enumerated in § 121.1 of this subchapter (*e.g.,* USML Category XIII(b)), apply for a technical data license pursuant to part 125 of this subchapter.

(h) A *system* is a combination of parts, components, accessories, attachments, firmware, software, equipment, or end-items that operate together to perform a function.

Note 1 to paragraph (h): The industrial standards established by the International Council on Systems Engineering (INCOSE), National Aeronautics and Space Administration (NASA), and International Organization for Standardization (ISO) provide examples for when commodities and software operate together to perform a function as a system.

(i) *Equipment* is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end-item or system. Equipment may be a subset of an end-item based on the characteristics of the equipment. Equipment that meets the definition of an end-item in paragraph (b) of this section is an end-item. Equipment that does not meet the definition of an end-item is a component, accessory, attachment, firmware, or software.

§ 120.41 Specially designed.

(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software is specially designed if it:

(1) As a result of development, has properties peculiarly responsible for

achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List (USML) paragraph in § 121.1 of this subchapter; or

Note 1 to paragraph (a)(1): An example of a commodity that as a result of development has properties peculiarly responsible for achieving or exceeding the controlled performance levels, functions, or characteristics in a USML category would be a swimmer delivery vehicle specially designed to dock with a submarine to provide submerged transport for swimmers or divers from submarines.

(2) Is a part, component, accessory, attachment, or software for use in or with a defense article.

(b) For purposes of this subchapter, a part, component, accessory, attachment, or software is not specially designed if it:

(1) Is subject to the EAR pursuant to a commodity jurisdiction determination;

(2) Is, regardless of form or fit, a fastener (*e.g.,* screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;

(3) Has the same function, performance capabilities, and the same or equivalent form and fit as a commodity or software used in or with a commodity that:

(i) Is or was in production (*i.e.,* not in development); and

(ii) Is not enumerated on the USML;

(4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the USML and also commodities not on the USML; or

(5) Was or is being developed as a general purpose commodity or software, *i.e.,* with no knowledge for use in or with a particular commodity (*e.g.,* a F/A–18 or HMMWV) or type of commodity (*e.g.,* an aircraft or machine tool).

Note 2 to paragraph (b): For a defense article not to be specially designed on the basis of paragraph (b)(4) or (5) of this section, documents contemporaneous with its development, in their totality, must establish the elements of paragraph (b)(4) or (5). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the commodity may not be excluded from being specially designed by either paragraph (b)(4) or (5).

Note 3 to paragraph (b): For the purpose of paragraphs (b)(4) and (5) of this section, ''knowledge'' includes not only the positive knowledge a circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.

§ 120.42 Form, fit, function, performance capability, equivalent, enumerated, and catch-all control.

(a) *Form.* The form of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. For software, the form means the design, logic flow, and algorithms.

(b) *Fit.* The fit of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity. For software, the fit is defined by its ability to interface or connect with a defense article.

(c) *Function.* The function of a commodity is the action or actions it is designed to perform. For software, the function means the action or actions the software performs directly related to a defense article or as a standalone application.

(d) *Performance capability.* Performance capability is the measure of a commodity's effectiveness to perform a designated function in a given environment (*e.g.,* measured in terms of speed, durability, reliability, pressure, accuracy, efficiency). For software, performance capability means the measure of the software's effectiveness to perform a designated function.

(e) *Equivalent.* With respect to a commodity, equivalent means its form has been modified solely for fit purposes.

(f) *Enumerated.* Enumerated refers to any item designated on the U.S. Munitions List or item on the Commerce Control List and not in a catch-all control.

(g) *Catch-all control.* A catch-all control is one that does not refer to specific types of parts, components, accessories, or attachments, but rather controls unspecified parts, components, accessories, or attachments only if they were specially designed for an enumerated item.

§ 120.43 Development, production, and related terms; Basic and applied research.

(a) *Development* is related to all stages prior to serial production, such as design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts. Development includes modification of an existing design.

(b)(1) *Production* means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. This includes serial production where commodities have passed production readiness testing (*i.e.,* an approved, standardized design ready for large scale production) and have been or are being produced on an assembly line for multiple commodities using the approved, standardized design.

(2) Commodities in production that are subsequently subject to development activities, such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (*e.g.,* an increased mean time between failure), including those pertaining to quality improvements, cost reductions, or feature enhancements, remain in production. However, any new models or versions of such commodities developed from such efforts that change the basic performance or capability of the commodity are in development until and unless they enter into production.

(c) *Design methodology* includes the underlying engineering methods and design philosophy utilized (*i.e.,* information that explains the rationale for a particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.,* lessons learned); and the rationale and associated databases (*e.g.,* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.,* performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)

(d) *Engineering analysis* includes the analytical methods and tools used to design or evaluate a defense article's performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)

(e) *Manufacturing know-how* includes information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article. (Information may be provided in a build-to-print package that is necessary in order to produce an acceptable defense article.)

(f) *Build-to-print* means that a foreign consignee can produce a defense article from engineering drawings without any technical assistance from a U.S.

exporter. This transaction is based strictly on a hands-off approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation (*e.g.,* acceptance criteria, object code software for numerically controlled machines) may be released on an as-required basis (*i.e.,* must have) such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know-how. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (*i.e.* nice to have) is not considered within the boundaries of a build-to-print data package.

(g) *Build/design-to-specification* means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a hands-off approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information.

(h) *Basic research* means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include applied research.

(i) *Applied research* means a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

§ 120.44 [Reserved]

§ 120.45 Maintenance levels.

(a) *Organizational-level maintenance* (or basic-level maintenance) is the first level of maintenance that can be performed on-equipment (directly on the defense article or support equipment) without specialized training. It consists of repairing, inspecting, servicing, calibrating, lubricating, or adjusting equipment, as well as replacing minor parts, components, assemblies, and line-replaceable spares or units. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (*e.g.,* an increased mean time between failure) and does not enhance the basic performance or capability of the defense article.

(b) *Intermediate-level maintenance* is second-level maintenance performed off-equipment (on removed parts, components, or equipment) at or by designated maintenance shops or centers, tenders, or field teams. It may consist of calibrating, repairing, testing, or replacing damaged or unserviceable parts, components, or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (*e.g.,* an increased mean time between failure) and does not enhance the basic performance or capability of the defense article.

(c) *Depot-level maintenance* is third-level maintenance performed on- or off-equipment at or by a major repair facility, shipyard, or field team, each with necessary equipment and personnel of requisite technical skill. It consists of providing evaluation or repair beyond unit or organization capability. This maintenance consists of inspecting, testing, calibrating, repairing, overhauling, refurbishing, reconditioning, and one-to-one replacing of any defective parts, components, or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (*e.g.,* an increased mean time between failure) and does not enhance the basic performance or capability of the defense article.

§§ 120.46–120.49 [Reserved]

§ 120.50 Export.

(a) *Export,* except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person in the United States (a deemed export);

(3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to this subchapter by a U.S. person to a foreign person;

(4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or

(6) The release of previously encrypted technical data as described in § 120.56(a)(3) and (4).

(b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

§ 120.51 Reexport.

(a) *Reexport,* except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release or transfer takes place (a deemed reexport); or

(3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to this subchapter between foreign persons.

(b) Any release outside the United States of technical data to a foreign person is deemed to be a reexport to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

§ 120.52 Retransfer.

(a) *Retransfer,* except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) A change in end-use or end-user, or a temporary transfer to a third party, of a defense article within the same foreign country; or

(2) A release of technical data to a foreign person who is a citizen or permanent resident of the country where the release or transfer takes place.

(b) [Reserved]

§ 120.53 Temporary import.

(a) *Temporary import,* except as set forth in § 120.54, means bringing into the United States from a foreign country any defense article that is:

(1) To be returned to the country from which it was shipped or taken; or

(2) Any defense article that is in transit to another foreign destination.

(b) Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination.

(c) Permanent imports are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (see 27 CFR parts 447, 478, 479, and 555).

§ 120.54 Activities that are not exports, reexports, retransfers, or temporary imports.

(a) The following activities are not exports, reexports, retransfers, or temporary imports:

(1) Launching a spacecraft, launch vehicle, payload, or other item into space;

(2) Transmitting or otherwise transferring technical data to a U.S. person in the United States from a person in the United States;

(3) Transmitting or otherwise transferring within the same foreign country technical data between or among only U.S. persons, so long as the transmission or transfer does not result in a release to a foreign person or transfer to a person prohibited from receiving the technical data;

(4) Shipping, moving, or transferring defense articles between or among the United States as defined in § 120.60;

(5) Sending, taking, or storing technical data that is:

(i) Unclassified;

(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or software) compliant with the Federal Information Processing Standards Publication 140–2 (FIPS 140–2) or its successors, supplemented by software implementation, cryptographic key management and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology (NIST) publications, or by other cryptographic means that provide security strength that is at least comparable to the minimum 128 bits of security strength achieved by the Advanced Encryption Standard (AES–128); and

(iv) Not intentionally sent to a person in or stored in a country proscribed in § 126.1 of this subchapter or the Russian Federation; and

Note 1 to paragraph (a)(5)(iv): Data in-transit via the internet is not deemed to be stored.

(v) Not sent from a country proscribed in § 126.1 of this subchapter or the Russian Federation.

(b)(1) For purposes of this section, end-to-end encryption is defined as:

(i) The provision of cryptographic protection of data, such that the data is not in an unencrypted form, between an originator (or the originator's in-country security boundary) and an intended recipient (or the recipient's in-country security boundary); and

(ii) The means of decryption are not provided to any third party.

(2) The originator and the intended recipient may be the same person. The intended recipient must be the originator, a U.S. person in the United States, or a person otherwise authorized to receive the technical data, such as by a license or other approval pursuant to this subchapter.

(c) The ability to access technical data in encrypted form that satisfies the criteria set forth in paragraph (a)(5) of this section does not constitute the release or export of such technical data.

§ 120.55 Access information.

Access information is information that allows access to encrypted technical data subject to this subchapter in an unencrypted form. Examples include decryption keys, network access codes, and passwords.

§ 120.56 Release.

(a) *Release.* Technical data is released through:

(1) Visual or other inspection by foreign persons of a defense article that reveals technical data to a foreign person;

(2) Oral or written exchanges with foreign persons of technical data in the United States or abroad;

(3) The use of access information to cause or enable a foreign person, including yourself, to access, view, or possess unencrypted technical data; or

(4) The use of access information to cause technical data outside of the United States to be in unencrypted form.

(b) *Provision of access information.* Authorization for a release of technical data to a foreign person is required to provide access information to that foreign person, if that access information can cause or enable access, viewing, or possession of the unencrypted technical data.

§ 120.57 Authorization types.

(a) *License* means a document bearing the word ''license'' issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or authorized designee, that permits the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

(b) *Other approval* means a document, other than a license, issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or authorized designee, that approves an activity regulated by this subchapter (*e.g.,* approvals for brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

(c) *Exemption* means a provision of this subchapter that authorizes the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service without a license or other written authorization.

(d) *Manufacturing license agreement* means an agreement (*e.g.,* contract), approved by the Directorate of Defense Trade Controls (DDTC), whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(1) The export of technical data or defense articles or the performance of a defense service; or

(2) The use by the foreign person of technical data or defense articles previously exported by the U.S. person.

(e) *Technical assistance agreement* means an agreement (*e.g.,* contract), approved by DDTC, for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, paragraph (d) of this section is applicable.

(f) *Distribution agreement* means an agreement (*e.g.,* a contract), approved by DDTC, to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory.

§ 120.58 Subject to the Export Administration Regulations (EAR).

Items *subject to the EAR* are those items listed on the Commerce Control List in part 774 of the Export Administration Regulations (EAR) and all other items that meet the definition of that term in accordance with § 734.3 of the EAR. The EAR is found at 15 CFR parts 730 through 774.

§ 120.59 [Reserved]

§ 120.60 United States.

United States, when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 120.61 Person.

Person means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person or U.S. person, then it refers to both.

§ 120.62 U.S. person.

U.S. person means a person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization, or group that is incorporated to do business in the United States. It also includes any governmental (Federal, state, or local) entity. It does not include any foreign person as defined in § 120.63.

§ 120.63 Foreign person.

Foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments, and any agency or subdivision of foreign governments (*e.g.,* diplomatic missions).

§ 120.64 Regular employee.

(a) *Regular employee* means:

(1) An individual permanently and directly employed by the company; or

(2) An individual in a long term contractual relationship with the company where the individual works at the company's facilities, works under the company's direction and control, works full time and exclusively for the company, and executes nondisclosure certifications for the company, and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license).

(b) [Reserved]

§ 120.65 Foreign ownership and foreign control.

(a) *Foreign ownership* means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons.

(b) *Foreign control* means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Foreign control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage.

§ 120.66 Affiliate.

(a) *Affiliate* (of a registrant) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such registrant.

(b) For purposes of this section, ''control'' means having the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is rebuttably presumed to exist where there is ownership of 25 percent or more of the outstanding voting securities if no other person controls an equal or larger percentage.

§ 120.67 Empowered official.

(a) *Empowered official* means a U.S. person who:

(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and

(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and

(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability, and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations in this subchapter; and

(4) Has the independent authority to:

(i) Inquire into any aspect of a proposed export, temporary import, or brokering activity by the applicant;

(ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and

(iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

(b) For the purposes of a broker who is a foreign person, the empowered official may be a foreign person who otherwise meets the criteria for an empowered official in paragraph (a) of this section.

§ 120.68 Party to the export.

(a) *Party to the export* means:

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (*e.g.,* comptroller, treasurer, general counsel), and any member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end-user of any item to be exported.

(b) [Reserved]

§ 120.69 Port Directors.

Port Directors means the U.S. Customs and Border Protection Port Directors at the U.S. Customs and Border Protection Ports of Entry (other than the port of New York, New York where their title is the Area Directors).

PART 121—THE UNITED STATES MUNITIONS LIST

■ 2. The authority citation for part 121 is revised to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 3. Add § 121.0 to read as follows:

§ 121.0 United States Munitions List description and definitions.

(a) For a description of the U.S. Munitions List and its designations, including the use of asterisks and the parenthetical ''(MT)'', see § 120.10 of this subchapter.

(b) As used in this part, *EAR* means Export Administration Regulations in 15 CFR parts 730 through 774.

§ 121.1 [Amended]

■ 4. Section 121.1 is amended as follows:

■ a. Remove and reserve paragraphs (a) and (b); and

■ b. In the United States Munitions List:

■ i. Remove ''*i.e.,*'', ''*See*'', and ''*see*'' everywhere they appear and add in their places ''*i.e.,*'', ''See'', and ''see'' respectively;

■ ii. Remove the phrases ''(see § 120.4 of this subchapter)'' and ''(see § 120.42 of this subchapter)'' everywhere they appear;

■ iii. Remove the phrase ''(see § 120.10 of this subchapter) and defense services

(see § 120.9 of this subchapter)'' everywhere it appears and add in its place ''(see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter)'';
■ iv. In Category II, remove Note 1 to paragraph (j)(17);
■ v. In Category III, remove Note 1 to paragraph (d)(15);
■ vi. In Category IV, remove the note to paragraph (h)(30);
■ vii. In Category V:
■ A. In paragraph (h)(2), remove the phrase ''(see § 120.10(a)(2) of this subchapter)'';
■ B. Remove Note to paragraph (h); and
■ C. In paragraph (j):
■ *1.* Remove the phrase ''(as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter)'' and add in its place ''(see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter)'';
■ *2.* Remove ''(see also § 123.20 of this subchapter)'' and add in its place ''(see also § 120.5(c) of this subchapter for nuclear related controls)'';
■ viii. In Category VI:
■ A. Remove the phrase ''see § 120.45(g)'' and add in its place ''see § 120.40(h)'' in Note to paragraph (b)(4);
■ B. Remove ''(see § 123.20 of this subchapter)'' and add in its place ''(see also § 120.5(c) of this subchapter for nuclear related controls)'' in paragraphs (e) and (f)(5); and
■ C. Remove the second sentence of paragraph of (f)(9)(iii);
■ ix. In Category VII:
■ A. Remove the phrase ''see § 120.45(g)'' and add in its place ''see § 120.40(h)'' in Note to paragraph (c); and
■ B. Remove the undesignated sentence following paragraph (g)(14)(iii);
■ x. In Category VIII, remove Note to paragraph (h)(20);
■ xi. In Category IX:
■ A. Remove Note to paragraph (a)(11) and Note to paragraph (b)(5); and
■ B. Remove the phrase ''see, § 120.9(a)(3)'' and add in its place ''see § 120.32(a)(3)'' in paragraph (e)(3);
■ xii. In Category X, remove Note to paragraph (d)(4);
■ xiii. In Category XI:
■ A. Remove the phrase ''(see § 120.10(a)(2) of this subchapter)'' in paragraph (c)(19)(iii);
■ B. Remove Note to paragraph (c)(19); and
■ C. Remove the phrase ''see § 121.8(f)'' and add in its place ''see § 120.40(g)'' in Note to paragraph (c)(19)(ii);
■ xiv. In Category XII:
■ A. Remove Note to paragraph (e)(23);
■ B. Remove the phrase ''(see § 120.10) and defense services (see § 120.9)'' and add in its place ''(see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter)'' in paragraph (f); and
■ C. Remove the reference ''§ 120.4'' and add in its place ''§§ 120.4 and 120.12'' in Note to Category XII;
■ xv. In Category XIII:
■ A. Remove the undesignated sentence following paragraph (f)(iii);
■ B. Remove the phrase ''see § 125.4(c)(4)'' and add in its place ''see § 120.43(c)'' in paragraph (i)(6); and
■ C. In paragraph (l):
■ *1.* Remove the phrase ''(see § 120.10 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h), (j), and (k) of this category and defense services (see § 120.9 of this subchapter)'' and add in its place ''(see § 120.33 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h), (j), and (k) of this category and defense services (see § 120.32) of this subchapter)''; and
■ *2.* Add at the end of the first sentence ''(see also § 120.5(c) of this subchapter for nuclear related controls)''; and
■ *3.* Remove the first parenthetical sentence;
■ xvi. In Category XIV:
■ A. Remove Note to paragraph (f)(8); and
■ B. Remove the phrase ''(as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter)'' and add in its place ''(see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter)'' in paragraph (m);
■ xvii. In Category XV:
■ A. Remove the phrase ''(see § 120.7 of this subchapter)'' in Note 3 to paragraph (a)(7); and
■ B. Remove the second sentence of paragraph (a)(13) and Note to paragraph (e)(21);
■ xvii. In Category XVI(e):
■ A. Add ''(see also § 120.5(c) of this subchapter for nuclear related controls)'' at the end of the first sentence; and
■ B. Remove the parenthetical sentence at the end of the paragraph;
■ xviii. In Category XVIII(g), remove the phrase ''(see § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter)'' and add in its place ''(see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter)'';
■ xix. In Category XIX, remove Note to paragraph (f)(6);
■ xx. In Category XX:
■ A. Remove the phrase ''see § 120.45(g)'' and add in its place ''see § 120.40(h)'' in Note to paragraph (a)(7); and
■ B. Remove ''(see § 123.20 of this subchapter)'' and add in its place ''(see also § 120.5(c) of this subchapter for nuclear related controls)'' in paragraph (b)(1); and
■ xxi. In Category XXI(a), remove the phrase ''(see § 120.7 of this subchapter)''.

§ 121.16 [Removed and Reserved]

■ 5. Remove and reserve § 121.16.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 6. The authority citation for part 122 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

§ 122.2 [Amended]

■ 7. In § 122.2:
■ a. In paragraph (a), remove the reference ''§ 120.40'' and add in its place ''§ 120.66'';
■ b. In paragraph (b)(1)(i), remove the reference ''§ 120.27'' and add in its place ''§ 120.6''; and
■ c. In paragraph (b)(2), remove the reference ''§ 120.37'' and add in its place ''§ 120.65''.

§ 122.4 [Amended]

■ 8. In § 122.4:
■ a. In paragraph (a)(1), remove the reference ''§ 120.27'' and add in its place ''§ 120.6''; and
■ b. In paragraph (b), remove the reference ''§§ 120.10 and 126.1(e)'' and add in its place ''§ 126.1(e)''.

PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

■ 9. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228; Sec. 520, Pub. L. 112–55; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

§ 123.1 [Amended]

■ 10. In § 123.1:
■ a. In paragraph (b) introductory text, remove the phrase ''(*see* § 120.42 of this subchapter)''; and
■ b. In paragraph (d), remove the reference ''§ 120.9(a)'' and add in its place ''§ 120.32''.

§ 123.4 [Amended]

■ 11. In § 123.4, in paragraph (c)(1), remove the reference ''§ 120.1(c)'' and add in its place ''§ 120.16''.

§ 123.9 [Amended]

■ 12. In § 123.9, in paragraph (b)(2), remove the phrase ''(see §§ 120.5,

120.42 and 123.1(b) of this subchapter)''.

§ 123.15 [Amended]

■ 13. In § 123.15, in paragraph (a) introductory text, remove the reference ''§ 120.8'' and add in its place ''§ 120.37''.

§ 123.16 [Amended]

■ 14. In § 123.16:
■ a. In paragraph (a), remove the reference ''§ 120.1(c)'' and add in its place ''§ 120.16'';
■ b. In paragraph (b)(4), remove the reference ''§ 120.45(b)'' and add in its place ''§ 120.40(c)''; and
■ c. In paragraph (b)(9) introductory text, remove the reference ''§ 120.37'' and add in its place ''§ 120.65''.

§ 123.17 [Amended]

■ 15. In § 123.17, in paragraph (k), remove the reference ''§§ 120.1(c) and (d)'' and add in its place ''§§ 120.15(d) and 120.16(c)''.

§§ 123.20 and 123.26 [Removed and Reserved]

■ 16. Remove and reserve §§ 123.20 and 123.26.

§ 123.27 [Amended]

■ 17. In § 123.27, in paragraph (a)(1), remove the references ''(see § 120.31 of this subchapter)'' and ''(see § 120.32 of this subchapter)''.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

■ 18. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Section 1514, Pub. L. 105–261; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

§ 124.1 [Amended]

■ 19. In § 124.1, in paragraph (a), remove the reference ''§ 120.9(a)'' everywhere it appears and add in its place ''§ 120.32''.
■ 20. In § 124.2:
■ a. In paragraph (b), remove the reference ''§ 120.9'' and add in its place ''§ 120.32''; and
■ b. Revise paragraph (c)(4).
The revision reads as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) * * *

(4) Supporting technical data must be unclassified and must not include software documentation on the design or details of the computer software, software source code, design methodology, engineering analysis, or manufacturing know-how.

* * * * *

§ 124.11 [Amended]

■ 21. In § 124.11, in paragraph (a), remove the phrases ''as defined in Sections 120.21 and 120.22 respectively'', ''(see § 120.7 of this subchapter)'' and '', as defined in § 120.8 of this subchapter''.
■ 22. In § 124.13, revise the section heading and paragraph (b) to read as follows:

§ 124.13 Procurement by U.S. persons in foreign countries (offshore procurement).

* * * * *

(b) The technical data of U.S.-origin to be used in the foreign manufacture of defense articles does not exceed that required for bid purposes on a build-to-print basis; and

* * * * *

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

■ 23. The authority citation for part 125 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

§ 125.1 [Amended]

■ 24. In § 125.1:
■ a. In paragraph (a), remove the phrase ''see § 120.11'' and add in its place ''see § 120.34''; and
■ b. In paragraph (e), remove the phrase ''please see § 123.20'' and add in its place ''see § 120.5(c)''.
■ 25. In § 125.4:
■ a. In paragraph (a), remove the reference ''§ 120.1(c)'' and add in its place ''§ 120.16'';
■ b. Revise paragraph (c); and
■ c. Remove paragraph (d).
The revision reads as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(c) Defense services and related unclassified technical data are exempt from the licensing requirements of this subchapter, to nationals of NATO countries, Australia, Japan, and Sweden, for the purposes of responding to a written request from the Department of Defense for a quote or bid proposal. Such exports must be pursuant to an official written request or directive from an authorized official of the U.S. Department of Defense. The defense services and technical data are limited to paragraphs (f), (g), and (h) (build-to-print, build/design-to-specification, and basic research, respectively) of § 120.43 of this subchapter and must not include paragraph (c), (d), (e), or (i) (design methodology, engineering analysis, manufacturing know-how, and applied research, respectively) of § 120.43.

§ 125.6 [Removed and Reserved]

■ 26. Remove and reserve § 125.6.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 27. The authority citation for part 126 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2780, 2791, and 2797; 22 U.S.C. 2651a; 22 U.S.C. 287c; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

§ 126.1 [Amended]

■ 28. In § 126.1, in paragraph (c)(1), remove the reference ''§ 120.15'' and add in its place ''§ 120.62''.

§ 126.5 [Amended]

■ 29. In § 126.5:
■ a. In paragraph (a), remove the phrase ''(*see* § 120.6 of this subchapter)''; and
■ b. In paragraph (b):
■ i. Remove the reference ''22 CFR 120.1(c) and (d)'' and add in its place ''§§ 120.15(d) and 120.16''; and
■ ii. Remove the reference ''§ 126.1 of this subchapter'' and add in its place ''§ 126.1''.

§§ 126.7, 126.9, 126.10, 126.11, and 126.12 [Removed and Reserved]

■ 30. Remove and reserve §§ 126.7, 126.9, 126.10, 126.11, and 126.12.

§ 126.13 [Amended]

■ 31. In § 126.13:
■ a. In paragraph (a)(1), remove the reference ''§ 120.27'' and add in its place ''§ 120.6''; and
■ b. In paragraph (a)(3), remove the references ''§ 126.7(e)'' and ''§ 120.27'' add in their places ''§ 120.68(a) of this subchapter'' and ''§ 120.6,'' respectively;

§ 126.16 [Amended]

■ 32. In § 126.16:
■ a. In paragraph (g)(1), remove the reference ''§ 120.17'' and add in its place ''§ 120.50''; and
■ b. In paragraph (o)(1)(iii), remove the phrase ''*see* § 120.7'' and add in its place ''see § 120.36''.

§ 126.17 [Amended]

■ 33. In § 126.17:

■ a. In paragraph (g)(1), remove the reference ''§ 120.17'' and add in its place ''§ 120.50''; and
■ b. In paragraph (o)(1)(iii), remove the phrase ''*see* § 120.7'' and add in its place ''see § 120.36''.

§ 126.18 [Amended]

■ 34. In § 126.18:
■ a. In paragraph (a), remove the phrase ''(see § 120.6)''; and
■ b. In paragraph (b), remove the references ''§ 127.1(b)'' and ''§ 120.16'' and add in their places ''§ 127.1(b) of this subchapter'' and ''§ 120.63 of this subchapter,'' respectively.

■ 35. In Supplement No. 1 to part 126:
■ a. In the table, revise the 14th entry ''I–XXI'';
■ b. In Note 5:
■ i. Remove the reference ''§ 125.4(c)(6)'' and add in its place ''§ 120.43(g)''; and
■ ii. Remove the reference ''(e)(1), (e)(2), or (e)(4)'' and add in its place ''(e)(1), (2), or (4)''; and
■ c. In Note 12:
■ i. Remove the phrase ''applied research (§ 125.4(c)(3) of this subchapter)'' and add in its place ''applied research (§ 120.43(i) of this subchapter)'';
■ ii. Remove the reference ''§ 125.4(c)(4)'' and add in its place ''§ 120.43(c)'';
■ iii. Remove the reference ''§ 125.4(c)(5)'' and add in its place ''§ 120.43(d)'';
■ iv. Remove the reference ''§ 125.4(c)(6)'' and add in its place ''§ 120.43(e);
■ v. Remove the reference ''§ 125.4(c)(1)'' and add in its place ''§ 120.43(f)'';
■ vi. Remove the reference ''§ 125.4(c)(2)'' and add in its place ''§ 120.43(g)''; and
■ vii. Remove the phrase ''basic research as defined in § 125.4(c)(3) of this subchapter'' and add in its place ''basic research as defined in § 120.43(h) of this subchapter''.

The revision reads as follows:

Supplement No. 1 to Part 126

* * * * *

USML category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
*	* * * *		*	*
I–XXI	Defense services or technical data specific to applied research as defined in § 120.43(i) of this subchapter, design methodology as defined in § 120.43(c) of this subchapter, engineering analysis as defined in § 120.43(d) of this subchapter, or manufacturing know-how as defined in § 120.43(e) of this subchapter. *See* Note 12.	X		
*	* * * *		*	*

* * * * *

PART 127—VIOLATIONS AND PENALTIES

■ 36. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

§ 127.1 [Amended]

■ 37. In § 127.1, in paragraph (d) introductory text, remove the reference ''§ 120.1(c)(2)'' everywhere it appears and add in its place ''§ 120.16(c)''.

§ 127.11 [Amended]

■ 38. In § 127.11, in paragraph (a), remove the reference ''§ 120.27'' and add in its place ''§ 120.6''.

§ 127.12 [Amended]

■ 39. In § 127.12:
■ a. In paragraph (a), remove the phrase ''(see § 120.14 of this subchapter)'';
■ b. In paragraph (c)(1)(i), remove the reference ''127.12(c)(2)'' and add in its place ''paragraph (c)(2)'';
■ c. In paragraph (c)(1)(ii), remove the references ''§ 120.25'' and ''§ 127.12(c)(2)'' and add in their places ''§ 120.67'' and ''paragraph (c)(2),'' respectively; and
■ d. In paragraph (e), remove the phrase ''See § 120.25'' and add in its place ''see § 120.67''.

PART 128—ADMINISTRATIVE PROCEDURES

■ 40. The authority citation for part 128 continues to read as follows:

Authority: Sections. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981; E.O. 13637, 78 FR 16129.

■ 41. Section 128.1 is revised to read as follows:

§ 128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act (AECA) authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. Pursuant to delegated authorities, the Secretary of State is authorized to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. The Secretary of State is also authorized to revoke, suspend, or amend licenses or other written approvals whenever such action is deemed to be advisable. The administration of the AECA is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the AECA, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

■ 42. Section 128.2 is revised to read as follows:

§ 128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 128.3 through 128.16.

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 43. The authority citation for part 129 continues to read as follows:

Authority: Section 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778); E.O. 13637, 78 FR 16129.

§ 129.2 [Amended]

■ 44. In § 129.2:

■ a. In paragraph (a) introductory text, remove the phrase ''*see* § 120.14'' and add in its place ''*see* § 120.61'';
■ b. In paragraph (a)(1), remove the phrase ''*see* § 120.15'' and add in its place ''see § 120.62'';
■ c. In paragraph (a)(2), remove the phrase ''*see* § 120.16'' and add in its place ''see § 120.63'';
■ d. In paragraph (b)(2)(iii), remove the phrase ''*see* § 120.39'' and add in its place ''see § 120.64'';
■ e. In paragraph (b)(2)(v), remove the reference ''§ 120.40'' and add in its place ''§ 120.66''; and
■ f. In paragraph (b)(2)(vi), remove ''*see* § 120.39'' and ''parts'' and add in their places ''see § 120.64'' and ''part,'' respectively.

§ 129.3 [Amended]

■ 45. In § 129.3, in paragraph (d), remove the phrase ''*see* § 120.40'' and add in its place ''see § 120.66''.

§ 129.4 [Amended]

■ 46. In § 129.4, in paragraph (a)(1), remove the phrase ''*see* § 120.44'' and add in its place ''see § 120.39''.

§ 129.5 [Amended]

■ 47. In § 129.5:
■ a. In paragraph (b), remove the phrase ''*see* § 120.44'' and add in its place ''see § 120.39''; and
■ b. In paragraph (c)(2), remove the reference ''§ 120.1(c)(2)'' and add in its place ''§ 120.16(c)''.

§ 129.6 [Amended]

■ 48. In § 129.6, in paragraphs (a)(2)(i) and (iii), remove the reference ''§ 120.27'' and add in its place ''§ 120.6''.

§ 129.8 [Amended]

■ 49. In § 129.8:
■ a. In paragraph (a), remove the phrase ''*see* § 120.40'' and add in its place ''see § 120.66'';
■ b. In paragraph (c)(1)(i), remove the reference ''§ 120.27'' and add in its place ''§ 120.6'';
■ c. In paragraph (c)(2), remove the phrase ''*see* § 120.37'' and add in its place ''see § 120.65''; and
■ d. In paragraph (d)(1), remove ''§ 120.27'' and ''government'' and add in their places ''§ 120.6'' and ''Government,'' respectively.

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

■ 50. The authority citation for part 130 continues to read as follows:

Authority: Sec. 39, Pub. L. 94–329, 90 Stat. 767 (22 U.S.C. 2779); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

§ 130.4 [Amended]

■ 51. In § 130.4, remove the reference ''§§ 120.6 and 120.9'' and add in its place ''§§ 120.31 and 120.32''.

Bonnie D. Jenkins,

Under Secretary for Arms Control and International Security, Department of State.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2020–0004]

RIN 1218–AD36

Occupational Exposure to COVID–19 in Healthcare Settings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of limited reopening of comment period; notice of informal hearing.

SUMMARY: OSHA is partially reopening the comment period to allow for additional public comment on specific topics and is scheduling an informal public hearing on its interim final rule establishing an Emergency Temporary Standard (ETS), ''Occupational Exposure to COVID–19.'' The public hearing will begin on April 27, 2022.

DATES: *Comments:* Written comments in response to OSHA's limited reopening of the comment period must be submitted in Docket No. OSHA–2020–0004 on or before April 22, 2022.

Informal public hearing: The hearing will begin on April 27, 2022, and will be held virtually. If necessary, the hearing will continue on subsequent days. Additional information on how to access the informal hearing will be posted when available at *https://www.osha.gov/coronavirus/healthcare/rulemaking.* To testify at the hearing, interested persons must electronically submit their Notice of Intention to Appear (NOITA) by April 6, 2022.

ADDRESSES:

Notices of Intention to Appear: Notices of intention to appear at the hearing (NOITA) must be submitted electronically at *https://www.osha.gov/coronavirus/healthcare/rulemaking.* Follow the instructions online for making electronic submissions. See ''Notices of Intention to Appear'' in the **SUPPLEMENTARY INFORMATION** section of this document for additional requirements for NOITAs.

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2020–0004, electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing ''all documents and comments'' in the docket (Docket No. OSHA–2020–0004), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this hearing notice, and click the ''Comment Now'' link. When uploading multiple attachments to *www.regulations.gov,* please number all of your attachments because *www.regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on *www.regulations.gov.*

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2020–0004). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments and other materials submitted in the docket, or to view the hearing schedule and procedures when available, go to Docket No. OSHA–2020–0004 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) may not be publicly available to read or download through that website. All documents submitted to *www.regulations.gov,* including copyrighted material, are available for inspection through the OSHA Docket Office. Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this rulemaking by author name and

publication year, when appropriate. This information can be used to search for a supporting document in the docket at *www.regulations.gov.* Contact the OSHA Docket Office at (202) 693–2350 (TTY number: (877) 889–5627) for assistance in locating docket submissions. Please note that NOITAs will be gathered outside the docket and OSHA will add a list of individuals who have submitted NOITAs to the docket after the submission deadline has passed.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1999; email: *OSHAComms@dol.gov.*

For general information and technical inquiries: Contact Andrew Levinson, Acting Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1950; email: *ETS@dol.gov.*

For Hearing Inquiries: Contact Amy Tryon, Division of Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor; telephone: (202) 693–8081; email: *ETS@dol.gov.*

SUPPLEMENTARY INFORMATION: On June 21, 2021, OSHA published an ETS to protect healthcare and healthcare support service workers from occupational exposure to COVID–19 in settings where people with COVID–19 are reasonably expected to be present (86 FR 32376). Although the ETS took effect immediately, OSHA also requested comment on whether it should become permanent, as well as on all other aspects of the ETS. OSHA received 481 comments concerning the ETS during the comment period, which was to end on July 21, 2021, but was extended to August 20, 2021, in response to requests from the public (86 FR 38232). To read or download comments and other materials submitted in the docket, go to Docket No. OSHA–2020–0004 at *www.regulations.gov.* In accordance with 29 U.S.C. 655(c)(3), the agency is now preparing to promulgate a final standard.

I. Additional Information and Request for Comment

OSHA is seeking public comment on certain specific topics and questions for the development of a final standard. Accordingly, the agency is partially reopening the comment period for the ETS to allow for additional comment on the topics identified below. OSHA encourages commenters to explain why they prefer or disfavor particular policy choices, and include any relevant studies, experiences, anecdotes, or other information that may help support the comment. OSHA seeks comments on the following topics:

A. Potential Changes From the ETS

The following is a list of potential rulemaking outcomes that would depart from the provisions of the ETS such that OSHA has decided to provide this additional notice and an opportunity to comment. OSHA has not made any decisions about these potential provisions or approaches, nor is this intended to list all of the potential changes from the ETS. Other changes may result after due consideration of all comments and hearing testimony.

A.1—Alignment with CDC Recommendations for Healthcare Infection Control Practices: Evolving CDC recommendations have resulted in inconsistencies between those recommendations and some of the Healthcare ETS provisions (*e.g.,* isolation and return-to-work guidance). A number of commenters requested that OSHA align its ETS more closely with various CDC recommendations. OSHA is considering doing so, but notes that, in some cases, CDC recommendations have continued to evolve even after the close of the comment period. OSHA is considering whether it is appropriate to align its final rule with some or all of the CDC recommendations that have changed between the close of the original comment period for this rule and the close of this comment period. OSHA seeks comment on this approach.

A.2—Additional Flexibility for Employers: Some employers expressed concern that the provisions of the Healthcare ETS were overly prescriptive. The ETS, while rooted in a programmatic approach (*e.g.,* COVID–19 plan, hazard assessment, policies and procedures to minimize the risk of transmission of COVID–19), also specified how employers were required to implement particular policies and procedures (*e.g.,* criteria for medical removal and return to work, cleaning, ventilation, barriers, aerosol-generating procedures). OSHA is considering restating various provisions as broader requirements without the level of detail included in the Healthcare ETS and providing a ''safe harbor'' enforcement policy for employers who are in compliance with CDC guidance applicable during the period at issue. OSHA seeks comment on this approach.

A.3—Removal of Scope Exemptions (e.g., ambulatory care facilities where COVID–19 patients are screened out; home healthcare): A final standard will be adopted under Section 6(b) of the OSH Act, which requires a finding of significant risk from exposure to COVID–19, rather than the finding of grave danger OSHA made in issuing the Healthcare ETS under Section 6(c) of the OSH Act. Section 6(b) requires that the standard substantially reduce or eliminate significant risk of material impairment of health to the extent feasible. In view of this different risk finding, OSHA is considering whether the scope of the final standard should cover employers regardless of screening procedures for non-employees and/or vaccination status of employees to ensure that all workers are protected to the extent there is a significant risk. OSHA seeks comment on this approach.

A.4—Tailoring Controls to Address Interactions with People with Suspected or Confirmed COVID–19: OSHA is considering the need for COVID–19-specific infection control measures in areas where healthcare employees are not reasonably expected to encounter people with suspected or confirmed COVID–19. This could include eliminating certain requirements that were included in the Healthcare ETS and that applied to all areas of covered healthcare settings. For example, OSHA could consider imposing cleaning requirements or medical removal provisions only with respect to staff exposed to COVID–19 patients or eliminating facemask requirements for staff not exposed to COVID–19 patients. If OSHA did restrict infection control requirements to particular areas of a facility or particular staff, it could consider balancing that narrower scope with a new ''outbreak provision'' to ensure that healthcare employers would still have a duty to address an outbreak quickly if an outbreak occurs among staff in the areas normally subject to fewer requirements. For example, an outbreak could trigger a broad performance requirement for the employer to implement additional infection control measures to stop the outbreak, or it could trigger more specific requirements, such as employer-provided testing and/or medical removal of staff with COVID–19 even if they do not interact with COVID–19 patients. OSHA seeks comment on these approaches, including comment on how OSHA should define an ''outbreak'' if it were to implement that approach (the CDC discusses ''outbreaks'' at *https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/outbreaks.html*).

A.5—Vaccination

A.5.1—Booster Doses: In the ETS, certain requirements take account of whether individuals are ''fully vaccinated,'' which is defined in paragraph (b) of the ETS as meaning ''2 weeks or more following the final dose of a COVID–19 vaccine.'' Subsequent to the publication of the ETS, the Advisory Committee on Immunization Practices (ACIP) has recommended additional doses and booster doses. CDC has also adopted the concept of ''up to date'' to describe vaccination recommendations beyond the primary vaccination series. OSHA is considering how these ACIP and CDC recommendations might impact the requirements in the ETS that take account of individuals' vaccination status (*e.g.,* fully vaccinated, up to date) and seeks comment on this issue.

A.5.2—Employer Support of Employee Vaccination: OSHA is *not considering at this time* requiring mandatory vaccination for employees covered by this standard.

- The Healthcare ETS included a provision requiring employers to inform employees about the safety, efficacy, and benefits of vaccination and provide reasonable time and paid leave to each employee for vaccination and side effects experienced following vaccination. OSHA is considering an adjustment to the requirement that would include paid time up to 4 hours, including travel time, for employees to receive a vaccine and paid sick leave to recover from side effects and seeks comment on the approach.
- OSHA is considering requiring employer support for employees who wish to stay up to date on vaccination and boosters in accordance with ACIP and CDC recommendations. OSHA seeks comment on the approach.
- OSHA is considering whether to limit the provisions that provide support for vaccination to employees not covered by the Centers for Medicare & Medicaid Services (CMS) vaccination rule (86 FR 61555) and seeks comment on this approach. The CMS vaccination rule requires healthcare staff in facilities regulated by CMS to be vaccinated. The majority of healthcare employees covered by this final rule work in facilities covered by the CMS vaccination rule and are subject to the CMS requirements.

A.5.3—Requirements for Vaccinated Workers: During the initial comment period, stakeholders raised questions about whether the Healthcare ETS requirements should be relaxed or eliminated based on the vaccination status of the individual worker involved, the general vaccination rate of the entire staff, and/or the general vaccination rate of the community. OSHA is considering suggestions that requirements be relaxed:

- For masking, barriers, or physical distancing for vaccinated workers in all areas of healthcare settings, not just where there is no reasonable expectation that someone with suspected or confirmed COVID–19 will be present
- in healthcare settings where a high percentage of staff is vaccinated (OSHA also is accepting comment on what that percentage should be)
- for exposure notification for vaccinated employees

OSHA seeks comment on these approaches.

A.6—Limited Coverage of Construction Activities in Healthcare Settings: OSHA did not expressly include employers that engage in construction work in hospitals, long-term care facilities and other settings that are covered by the ETS. The construction industry was not included in OSHA's industrial profile for the rule. OSHA is considering clarifying this coverage and seeks comment on this approach. For example, OSHA is considering the same coverage for workers engaged in construction work inside a hospital (*e.g.,* installing new ventilation or new equipment or adding a new wall) as for workers engaged in maintenance work or custodial tasks in the same facility. OSHA could consider exceptions for construction work in isolated wings or other spaces where construction employees would not be exposed to patients or other staff.

A.7—Recordkeeping and Reporting: New Cap for COVID–19 Log Retention Period: The COVID–19 log and reporting provisions, 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)–(iv), and (r), have remained in effect because OSHA found good cause to forgo notice and comment in light of the grave danger presented by the pandemic. See 86 FR 32559. Now that OSHA is re-opening the comment period for the final rule, the agency also seeks additional comment on 1910.502(q) and (r). In general, OSHA is focused on whether any adjustments to those paragraphs should be made in light of experiences involving the Delta or Omicron variants. In addition, the agency proposes to cap the record retention period for the COVID–19 log at one year from the date of the last entry in the log, rather than the current approach in which that retention period is tied to the duration of the standard (see 29 CFR 1910.502(q)(2)(ii)(C)).

A.8—Triggering Requirements Based on the Level of Community Transmission: When employees are treating people with suspected or confirmed COVID–19, the ETS requires certain control strategies (*e.g.,* PPE) regardless of community transmission levels. Under the CDC's current guidance for healthcare workers,[1] many requirements for those workers are triggered based on the level of community transmission of COVID–19 (*e.g.,* controls needed in areas of substantial or high transmission, controls not needed in areas of low or moderate transmission). OSHA is considering linking regulatory requirements to measures of local risk, such as CDC's community transmission used in CDC's guidance for healthcare settings or the CDC's COVID–19 Community Levels used in CDC's guidance for prevention measures in community settings.[2] OSHA is seeking comment on that approach, including impacts of such an approach on compliance and enforcement.

A.9—Evolution of SARS–CoV–2 into a Second Novel Strain: It is possible that a future variant of SARS–CoV–2 will have sufficient genetic drift to be designated another novel coronavirus strain but still results in a disease that is similar to the current illness (*e.g.,* a hypothetical ''COVID–22''). OSHA is considering specifying that this final standard would apply not only to COVID–19, but also to subsequent related strains of the virus that are transmitted through aerosols and pose similar risks and health effects. OSHA seeks comment on this approach and alternatives to addressing the potential for new strains related to SARS–CoV–2.

B. Additional Information/Data Requested

OSHA recognizes that the majority of the comment period occurred prior to when the Delta and Omicron variants became prevalent in the United States. OSHA requests new studies or data related to the Delta and Omicron variants since the close of the initial comment period in August 2021, particularly with respect to:

B.1: The average number of days healthcare workers have taken away from work resulting from a COVID–

[1] Centers for Disease Control and Prevention (CDC). (2022, February 2). Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID–19) Pandemic. *https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html.*

[2] See Centers for Disease Control and Prevention (CDC). (2022, February 2); see also Centers for Disease Control and Prevention (CDC). (2022, March 4). COVID–19 Community Levels. *https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html.*

19 infection or quarantine and the percentage of healthcare workers who have taken days away from work due to a COVID–19 infection or quarantine

B.2: The health effects for fully vaccinated employees, and fully vaccinated and boosted employees, who test positive for COVID–19, including data on days away from work, hospitalizations, long COVID, and fatalities

B.3: The percentage of healthcare workers who are at elevated risk of severe COVID–19 infections (*e.g.,* resulting in hospitalization or extended days away from work), including for age-related or immunocompromised reasons (not based solely on vaccination status)

B.4: The rate of infection, long COVID, hospitalization, and death among healthcare workers compared to those rates among the general adult population

B.5: The health effects and transmission rate of new and emerging variants and sub-lineages of variants, including Omicron BA.2

Additionally, OSHA requests data and information on:

B.6: The vaccination rate among healthcare workers, including the rate of healthcare workers who are fully vaccinated and boosted

B.7: The clinical indicators that will reliably predict the degree of protection afforded by prior infection (*i.e.,* infection-acquired immunity), and how long such protection lasts

B.8: Vaccine efficacy and how such efficacy decreases over time

B.9: The appropriate periodicity of additional vaccine doses and booster doses

B.10: Unintended consequences, such as decreases in staffing retention, or other impacts, such as increases in staffing retention, due to the potential alternatives raised in this notice

C. Information for Economic Analysis

C.1 Industry Profile: For the Healthcare ETS Industry Profile, OSHA based the number of Affected Employees for Affected Industries on whether employees performed healthcare services or healthcare support services under the ETS. If employees did not perform healthcare services or healthcare support services, OSHA did not consider them Affected Employees. See 86 FR 32485. While this approach covered the appropriate North American Industry Classification System (NAICS), the approach may have resulted in an underestimate of Affected Employees. As stated in 29 CFR 1910.502(a), ''this section applies to all settings where any employee provides healthcare services or healthcare support services.'' To address this potential underestimate for the final rule, OSHA is considering revising its approach to base the number of Affected Employees on setting, rather than occupation. OSHA seeks comment on this potential approach.

C.1.1—Covered Industries

C.1.1A: OSHA acknowledged in the Healthcare ETS that it did not ''determine[ ] how many non-hospital ambulatory care providers will screen patients for COVID–19 infections and symptoms, and therefore might be fully exempt from the standard under paragraph (a)(2)(iii)'' of the ETS (86 FR at 32485). While OSHA included in the Healthcare ETS Industry Profile several NAICS outside of healthcare where embedded clinics are prevalent, such as schools, OSHA did not include a number of industries that may have settings with embedded clinics (*e.g.,* embedded clinics in manufacturing facilities) in the industry profile. The Healthcare ETS applies to these embedded clinics, as OSHA made clear both in the regulatory text and the Summary and Explanation for the ETS. See 29 CFR 1910.502(a)(3)(i); 86 FR at 32563. To address this, OSHA is considering including these industries in the final rule's industry profile. OSHA notes that compliance with the final rule for these industries would most likely result in minimal costs or no costs because, under the Healthcare ETS, OSHA anticipated that many embedded clinics will be fully exempt under the non-hospital ambulatory care exception; and, if the rule applies, it will apply only with respect to embedded clinics and not the entire facility. OSHA seeks comment on this potential approach.

C.1.1B: As discussed above, OSHA noted in the Healthcare ETS that it did not determine ''how many non-hospital ambulatory care providers will screen patients for COVID–19 infections and symptoms, and therefore be fully exempt from this rule under paragraph (a)(2)(iii)'' (86 FR at 32485). OSHA also noted that ''[t]o the extent that providers meet these exemption criteria, they will incur no costs for compliance with respect to these settings,'' and that ''[t]herefore, for this subset of establishments, the costs presented in OSHA's analysis will be dramatic overestimates (*i.e.,* OSHA assumes full costs where costs should be zero).'' (Id.) For the final rule, OSHA is considering estimating the number of employers subject to this exemption, if it remains in the standard, but seeks information and data to support such an estimate.

C.1.2 Telework Employees: In the Healthcare ETS, OSHA accounted for reduced employee exposure due to telework for benefits, but did not explicitly account for telework in the number of employees affected by the final rule in the Industry Profile. This may have resulted in an overestimate of several employee-based costs, like the costs of respirators and personal protective equipment, because OSHA may have overestimated the number of employees affected by the final rule. In the Vaccination and Testing ETS, OSHA adjusted its telework estimates to reflect then-current teleworking conditions (see 86 FR 61462–61467). OSHA is considering making similar adjustments to the final Healthcare rule to estimate the current number of employees who telework. OSHA seeks comment on this potential approach.

C.2 Costs

C.2.1—One-time costs: OSHA requests comments on the extent to which some costs (*e.g.,* costs associated with initial training, upgrading ventilation, rule familiarization, COVID–19 Plan development, respiratory protection program development) have already been incurred to comply with the ETS. OSHA further requests comments on the extent to which employers and other entities will bear ongoing costs (*e.g.,* ongoing costs associated with training, PPE, respirators and the respiratory protection program, medical removal protection, COVID–19 plan monitoring and modification, and ventilation maintenance) under a final rule.

C.2.2—Age Group 65–74

C.2.2A: OSHA had not included employees in the age group 65–74 in the economic analysis of the Healthcare ETS out of concern that the population-wide average of workers in this age bracket would overcount the number of such workers in this sector. See 86 FR at 61470 n. 32. OSHA is rethinking this approach for the Healthcare final rule and seeks comment on including this age group in the analysis of both costs and benefits.

C.2.2B: OSHA will likely update its estimates to reflect the current baseline of vaccinated employees (for example, to incorporate the effects of the CMS vaccine-mandate rule on vaccination rates). OSHA will likely rely on the most recent CDC COVID–19 data tracker, as it did for the Healthcare ETS and the Vaccination and Testing ETS,

and may also rely on estimates or data from CMS or other credible sources, to update its estimates. OSHA seeks comment on whether there is other data OSHA should rely on.

C.2.3—Ancillary Costs

C.2.3A: In the Healthcare ETS, OSHA offset the cost to employers associated with medical removal and vaccination support with tax credits employers would receive. OSHA is considering how to adjust its methodology in the final rule given the expiration of these tax credits and seeks data and information on this issue. OSHA notes that it could take an approach similar to the one it took in the Vaccination and Testing ETS, *i.e.,* by estimating the number of employers that would (and would not) incur costs because employees could be required to use accrued sick leave benefits for medical removal and vaccination support (Compare 86 FR 32512 (including footnote 61) with 86 FR 61480).

C.2.3B: OSHA is considering updating the manner in which it estimates side effects associated with vaccine doses using CDC estimates (86 FR 32513 & n.63). OSHA is considering following an approach similar to the one it followed in the Vaccination and Testing ETS (86 FR 61480) where OSHA calculated the estimated time off using a more recent study that surveyed workers at a statewide healthcare system who had been vaccinated.[3] OSHA seeks data and information on this issue.

C.3 Benefits Data Sources: For the final rule, OSHA is considering using CDC COVID–19 case and fatality data which was unavailable when the Healthcare ETS was initially issued, and seeks comment on this issue. OSHA based the Vaccination and Testing ETS impact analysis on the CDC data which tabulates the respective number of cases and fatalities for the unvaccinated and vaccinated populations.

OSHA also seeks information and data on cases, illnesses, hospitalizations, and fatalities that are specific to employees that would be subject to the final rule (*i.e.,* those in the healthcare field). OSHA notes that it is aware of one potential source that measured deaths in healthcare occupations during the first year of the pandemic.[4]

OSHA is considering using all sources of data on which it relied in the Healthcare ETS and the Vaccination and Testing ETS, as well some new data sources it did not rely on, including, for example:

- CDC Daily Tracker: Daily Tracker Home,[5]
- Demographic Trends of COVID–19 cases and deaths in the US reported to CDC,[6] [7] [8]
- Rates of COVID–19 Cases and Deaths by Vaccination Status,[9]
- Rates of laboratory-confirmed COVID–19 hospitalizations by vaccination status,[10]
- United States COVID–19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction,[11]
- Nationwide COVID–19 Infection-Induced Antibody Seroprevalence,[12] [13]
- Kaiser Health News/UK Guardian,[14]
- US Census: Current Population Statistics,[15]
- The National Panel Study of COVID–19 (NPSC19),[16] [17]
- Census Bureau Household Pulse Survey,[18]
- National Center for Health Statistics,[19]
- American Community Survey,[20] and
- Optum Clinformatics Data Mart.[21]

C.4 Small Business: In developing the Final Regulatory Flexibility Analysis (FRFA), OSHA is seeking comments on whether there are specific issues regarding small covered healthcare entities (*i.e.,* small businesses, small non-profits, and small government jurisdictions) that OSHA should consider, particularly with respect to the technical or economic feasibility of complying with a possible revised rule.

C.5—Assumptions

C.5.1 Vaccine Efficacy: For the Healthcare ETS, OSHA accounted for vaccine efficacy in its benefits analysis. For the final rule, OSHA is considering accounting for booster efficacy using the CDC Data Tracker, which was the same source for determining vaccine efficacy. OSHA seeks comment on this potential approach and data on which to update its estimates.

C.5.2 Frequency, Severity, and Distribution of Infections: There was ''still some uncertainty surrounding the frequency and severity of COVID–19 infections and their distribution'' when the Healthcare ETS was issued (86 FR 32545), so OSHA focused that economic analysis on hospitalizations and fatalities. More time and data have brought more certainty regarding other outcomes, so for the final rule OSHA is considering also accounting in its economic analysis for COVID–19-related long-term effects (*i.e.,* long COVID), hospitalization, and shorter illness (due to variants, increased vaccinations, and improved treatments). Additionally, OSHA is considering using an approach similar to that in the Vaccination and Testing ETS, where OSHA took account of breakthrough cases and fatalities in vaccinated employees when it assessed the health impacts. OSHA seeks comment and data on these potential modifications.

II. Informal Public Hearing—Purpose, Rules, and Procedures

One commenter requested that OSHA hold a public hearing on the

[3] Levi ML et al. (2021, September 25). COVID–19 mRNA vaccination, reactogenicity, work-related absences and the impact on operating room staffing: A cross-sectional study. Perioperative Care and Operating Room Management preprint. *https://doi.org/10.1016/j.pcorm.2021.100220.*

[4] Kaiser Health News and the Guardian. (2021, April). Lost on the Frontline. The Guardian. *https://www.theguardian.com/us-news/ng-interactive/2020/aug/11/lost-on-the-frontline-covid-19-coronavirus-us-healthcare-workers-deaths-database.*

[5] CDC Daily Tracker: Daily Tracker Home: *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[6] COVID–19 Weekly Cases and Deaths per 100,000 Population by Age, Race/Ethnicity, and Sex: *https://covid.cdc.gov/covid-data-tracker/#demographicsovertime.*

[7] Demographic Trends of COVID–19 cases and deaths in the U.S. reported to CDC: *https://covid.cdc.gov/covid-data-tracker/#demographics.*

[8] Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors Maps, charts, and data provided by CDC: *https://covid.cdc.gov/covid-data-tracker/#pop-factors_7daynewcases.*

[9] Rates of COVID–19 Cases and Deaths by Vaccination Status: *https://covid.cdc.gov/covid-data-tracker/#rates-by-vaccine-status.*

[10] *https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalizations-vaccination.*

[11] *https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days.*

[12] Nationwide COVID–19 Infection-Induced Antibody Seroprevalence (Commercial laboratories): *https://covid.cdc.gov/covid-data-tracker/#national-lab.*

[13] Nationwide COVID–19 Infection- and Vaccination-Induced Antibody Seroprevalence (Blood donations): *https://covid.cdc.gov/covid-data-tracker/#nationwide-blood-donor-seroprevalence.*

[14] Kaiser Health News and the Guardian. (2021, April). Lost on the Frontline. The Guardian. *https://www.theguardian.com/us-news/ng-interactive/2020/aug/11/lost-on-the-frontline-covid-19-coronavirus-us-healthcare-workers-deaths-database.*

[15] *https://www.census.gov/programs-surveys/cps/data.html.*

[16] *https://www.brookings.edu/blog/up-front/2020/08/13/the-covid-19-public-health-and-economic-crises-leave-vulnerable-populations-exposed/.*

[17] *https://static1.squarespace.com/static/57c9d7602994ca1ac7d06b71/t/60243c4a2c291024fa12e979/1612987471528/UW_IRP_Grooms_Feb_2021.pdf.*

[18] Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic: *https://www.census.gov/programs-surveys/household-pulse-survey.html.*

[19] *https://www.cdc.gov/nchs/data_access/ftp_data.htm.*

[20] *https://www.census.gov/programs-surveys/acs/data.html.*

[21] *https://web.uri.edu/optum/.*

rulemaking. See OSHA–2020–0004–1034, Attachment 1. OSHA has agreed to do so. OSHA invites interested persons to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing to provide the agency with the best available evidence to use in developing the final rule.

Pursuant to 29 CFR 1911.15(a) and 5 U.S.C. 553(c), members of the public have an opportunity at the informal public hearing to provide oral testimony and evidence on issues raised by the proposal. An administrative law judge (ALJ) presides over each OSHA hearing and will resolve any procedural matters relating to the hearing.

OSHA's regulation governing public hearings (29 CFR 1911.15) establishes the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ and questioning of witnesses may be allowed on crucial issues, the proceeding is largely informal and essentially legislative in purpose. Therefore, the hearing provides interested persons with an opportunity to make oral presentations in the absence of rigid procedures that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the Federal Rules of Evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. Accordingly, questions of relevance, procedure, and participation generally will be resolved in favor of developing a clear, accurate, and complete record within the available time frame.

The available time frame for this rulemaking is short as the agency hopes to complete the rulemaking as quickly as possible. OSHA remains aware of the dangers to healthcare workers exposed to COVID–19, as well as the potential for new variants and the surges of patients with COVID–19 that could follow in healthcare. Pursuant to 29 CFR 1911.4, the Assistant Secretary may, on reasonable notice, issue additional or alternative procedures to expedite the proceedings.

Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the proposal, the ALJ has the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure a full and fair hearing, the ALJ has the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters pertinent to the issues the proposed rule raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments, and arguments from those who participated in the hearing (29 CFR 1911.16).

At the close of the hearing, there will be a post-hearing comment period during which stakeholders may submit final briefs, arguments, summations, and additional data and information to OSHA.

III. Notice of Intention To Appear at the Hearing

Interested persons who intend to provide oral testimony or documentary evidence at the hearing must file a written NOITA prior to the hearing and in accordance with the instructions in the **ADDRESSES** section earlier in this document. To testify at the hearing, interested persons must electronically submit their NOITA on or before April 6, 2022. The NOITA must provide the following information:

(1) Name, address, email address, and telephone number of each individual who will give oral testimony;

(2) Name of the establishment or organization each individual represents, if any;

(3) Occupational title and position of each individual testifying; and

(4) A brief statement of the position each individual will take with respect to the issues raised by the ETS (*e.g.,* ''I generally support/oppose the whole standard,'' ''the requirement for [specific provision] should be removed,'' ''the scope of the rule should be changed to include/exclude . . .'').

The agency will consider the information in each submission when setting the hearing schedule. Before the hearing, OSHA will make the hearing procedures and hearing schedule available at *https://www.osha.gov/coronavirus/healthcare/rulemaking* and in the docket. OSHA emphasizes that the hearing is open to the public; however, only individuals who file a NOITA may testify at the hearing.

IV. Certification of the Hearing Record and Agency Final Determination

Following the close of the hearing and the post-hearing comment period, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. The ALJ, however, will not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review all the evidence received into the record and will issue the final rule based on the record as a whole.

Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)); 29 CFR part 1911; and 5 U.S.C. 553.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–06080 Filed 3–22–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0180]

Safety Zone; March Madness Fireworks Display, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone for a fireworks display located on the navigable waters of the Lower Mississippi River between Mile Marker (MM) 94.5 to 95.5. This action is needed to provide for the safety of life on these navigable waterways during the event. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Captain of the Port or designated representative.

DATES: The regulations in 33 CFR 165.845 will be enforced from 9:30 p.m. to 11 p.m. on April 3, 2022.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zone located

in 33 CFR 165.845 for the March Madness Fireworks Display event. The regulations will be enforced from 9:30 p.m. through 11 p.m. on April 3, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event, which will be located between MM 94.5 to 95.5 above Head of Passes, Lower Mississippi River, LA.

During the enforcement periods, if you are the operator of a vessel in the regulated area you must comply with directions from the Captain of the Port or designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletins (MSIBs), Local Notice to Mariners (LNMs), and/or Broadcast Notice to Mariners (BNMs).

Dated: March 17, 2022.

W.E. Watson,

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

[FR Doc. 2022–06054 Filed 3–22–22; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 87, No. 56
Wednesday, March 23, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0288; Project Identifier MCAI–2021–00913–G]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Segelflugzeugbau Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 gliders. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as wing root damage. This proposed AD would require repetitively inspecting the wing root ribs for cracks, looseness, and damage and replacing any root rib with a crack, a loose rib or lift pin bushing, or any damage. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2022.

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

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

For service information identified in this NPRM, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, Poppenhausen, Germany D–36163; phone: +49 (0) 06658 89–0; email: *info@alexander-schleicher.de*; website: *https://www.alexander-schleicher.de.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0288; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0288; Project Identifier MCAI–2021–00913–G'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0187, dated August 9, 2021 (referred to after this as ''the MCAI''), to address an unsafe condition on certain Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW 15 gliders. The MCAI states:

> Occurrences were reported of finding wing root rib damage. Investigation is ongoing to determine the root cause of the damage.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the wing assembly of the sailplane.
>
> To address this potential unsafe condition, Schleicher issued the TN [technical note] to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of each affected part and, depending on findings, replacement. This [EASA] AD also introduces restrictions for installation of an affected part.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0288.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021. This service information specifies inspecting the root ribs at the wings.

The FAA also reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021. This service information specifies procedures for replacing the root ribs.

In addition, the FAA reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021. This service information specifies procedures for inspecting the root ribs at the wings for damage.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

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

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 20 gliders of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect root ribs	1 work-hour × $85 per hour = $85	Not Applicable	$85	$1,700

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace all four root ribs	8 work-hours × $85 per hour = $680	$1,000	$1,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Alexander Schleicher GmbH & Co. Segelflugzeugbau: Docket No. FAA–2022–0288; Project Identifier MCAI–2021–00913–G.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5712, Wing, Rib/Bulkhead.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as wing root rib damage. The FAA is issuing this AD to detect and correct damaged root ribs. The unsafe condition, if not addressed, could result in reduced structural integrity of the wing assembly, which could lead to loss of control of the glider.

(f) Compliance

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

(g) Action

(1) Within 30 days after the effective date of this AD and thereafter at intervals not to exceed 12 months, inspect all wing root ribs (4 places) for cracks, looseness, and damage in accordance with the Action section in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021. If there is a crack in any root rib, a loose rib or lift pin bushing, or any damage, before further flight, replace the root rib in accordance with Action paragraph (B) in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021, and steps 1 through 7 in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021.

(2) Replacing all four wing root ribs is terminating action for the repetitive inspections required by this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD and email to: *9-AVS-AIR-730-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.

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(2) Refer to MCAI European Union Aviation Safety Agency (EASA) AD 2021–0187, dated August 9, 2021, for related information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0288.

(3) For service information identified in this AD, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, Poppenhausen, Germany D–36163 ; phone: +49 (0) 06658 89–0; email: *info@alexander-schleicher.de;* website: *https://www.alexander-schleicher.de.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on March 15, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05873 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0167; Airspace Docket No. 22–AGL–14]

RIN 2120–AA66

Proposed Establishment of Class D Airspace; Chicago/Romeoville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace at Chicago/Romeoville, IL. The FAA is proposing this action to support the establishment of an air traffic control tower at Lewis University Airport, Chicago/Romeoville, IL.

DATES: Comments must be received on or before May 9, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0167/Airspace Docket No. 22–AGL–14 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class D airspace at Lewis University Airport, Chicago/Romeoville, IL, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0167/Airspace Docket No. 22–AGL–14.'' 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 *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class D airspace within a 4.1-mile radius of Lewis University Airport, Chicago/Romeoville, IL, extending from the surface up to and including 3,200 feet MSL.

This action supports the establishment of an air traffic control tower at Lewis University Airport.

Class D airspace designations are published in paragraph 5000 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL IL D Chicago/Romeoville, IL [Establish]

Lewis University Airport, IL
(Lat. 41°36′29″ N, long. 88°05′47″ W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.1-mile radius of Lewis University Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Issued in Fort Worth, Texas, on March 16, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–05883 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0140; Airspace Docket No. 22–ACE–6]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Kansas City, MO. The FAA is proposing this action as the result of a biennial airspace review.

DATES: Comments must be received on or before May 9, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0140/Airspace Docket No. 22–ACE–6 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Kansas City International Airport, Kansas City, MO, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0140/Airspace Docket No. 22–ACE–6.'' 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 *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface within an 8.5-mile (increased from a 7.6-mile) radius of Kansas City International Airport, Kansas City, MO.

This action is necessary due to a biennial airspace review.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ACE MO E5 Kansas City, MO [Amended]

Kansas City International Airport, MO
(Lat. 39°17′51″ N, long. 94°42′50″ W)
Charles B. Wheeler Downtown Airport, MO
(Lat. 39°07′23″ N, long. 94°35′34″ W)
Charles B. Wheeler Downtown: RWY 03–LOC
(Lat. 39°07′40″ N, long. 94°35′17″ W)
Sherman Army Airfield (AAF), KS
(Lat. 39°22′03″ N, long. 94°54′52″ W)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of Kansas City International Airport; and within a 6.7-mile radius of Charles B. Wheeler Downtown Airport; and within 2 miles each side of the 215° bearing from the Charles B. Wheeler Downtown: RWY 03–LOC, extending from the 6.7-mile radius to 8.7 miles south of Charles B. Wheeler Downtown Airport; and within a 6.5-mile radius of Sherman AAF.

Issued in Fort Worth, Texas, on March 16, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–05882 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0229; Airspace Docket No. 22–ANE–2]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Rangeley, ME

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 Stephen A. Bean Municipal Airport, Rangeley, ME, due to the decommissioning of the Rangeley non-directional beacon (NDB) and cancellation of associated approaches, as well as updating the airport's name and geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before May 9, 2022.

ADDRESSES: Send comments on this proposal to: the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2022–0229; Airspace Docket No. 22–ANE–2 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: 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 would amend airspace in Rangeley, ME, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on 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 (Docket No. FAA–2021–0229 and Airspace Docket No. 22–ANE–2) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0229; Airspace Docket No. 22–ANE–2.'' 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 document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, Room 350, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective

September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at Stephen A. Bean Municipal Airport, Rangeley, ME, due to the decommissioning of the Rangeley NDB and cancellation of associated approaches. This action would increase the radius to 6.5 miles (previously 6.3 miles), and eliminate the southwest extension. This action would also update the airport's name to Stephen A. Bean Municipal Airport (formerly Rangeley Municipal Airport), and update the airport's geographic coordinates to coincide with the FAA's database.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

* * * * *

ANE ME E5 Rangeley, ME [Amended]

Stephen A Bean Municipal Airport, ME
(Lat. 44°59′32″ N, long. 70°39′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stephen A. Bean Municipal Airport.

Issued in College Park, Georgia, on March 15, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–05786 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0103; FRL–9624–01–R8]

Air Plan Approval; CO; Reg 3 NSR and APEN Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of Colorado on May 13, 2020. The revisions contain amendments to the State's New Source Review (NSR) permitting program and Air Pollution Emission Notices (APENs). The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 22, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2022–0103, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6227, email address: *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever

''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On May 13, 2020, the State of Colorado adopted and repealed revisions to Regulation Number 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements) Part A (Concerning General Provisions Applicable to Reporting and Permitting), Part B (Concerning Construction Permits) and Part C (Concerning Operating Permits.) The revisions we are acting on are in Colorado's minor source permitting program. The EPA is proposing to approve all of the revisions submitted on May 13, 2020, with the exception of the revision to Part A, Section II.A.2.a, which was not extended by the Colorado General Assembly and expired effective May 15, 2021. As a result, this section is no longer in Regulation Number 3. We received a letter from Colorado requesting to withdraw this provision from the May 13, 2020 submittal on October 15, 2021 (See docket.) along with revisions to Appendix B (Non-Criteria Reportable Pollutants), as they are not part of the SIP. We will also not be acting on the revisions to Regulation Number 7, as they were acted on in a separate action on November 5, 2021 (86 FR 61071).

The May 13, 2020 submittal contains the following revisions to Regulation 3, Parts A, B and C:

1. Revises existing definitions and adds an existing definition used in Regulation Number 7 (Control of Ozone via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions);
2. Updates the APEN reporting and permitting requirements for oil and gas well production facilities;
3. Clarifies and narrows certain exemptions and repeal certain exemptions related to oil and gas wastewater impoundments;
4. Revises the SIP to more closely align language with Colorado Statutes;
5. Clarifies when transfer of ownership forms are due and where the compliance responsibilities lie during the transfer process; and
6. Corrects typographical, grammatical and formatting errors found throughout the regulations.

II. The EPA's Evaluation

A. Revisions to Regulation 3, Part A

I.—Applicability

(1) I.B.47

The definition of ''Well Production Facility'' is added. This is approvable, as the definition already exists in Regulation Number 7, I.B.30. This definition was added to Regulation Number 3 to promote consistency throughout the State's permitting regulations. This definition was previously referred to as the undefined term ''exploration and production.'' This revision meets the statutory and regulatory requirements as outlined in Section III. below of this proposed rulemaking.

(2) I.B.12

The definition of ''Commencement of Operation'' is revised. This revision is approvable. The definition reflects that when permanent equipment is on-site and operating, commencement of operation has occurred, even if there is temporary equipment on-site. For example, if a well is producing into one temporary tank and two permanent storage tanks, the storage tanks have commenced operation for purposes of Regulation Number 3. The revision separates the requirement from any specific stage of well operation. The revised definition clarifies that commencement of operation is not always determined by the transition of well completion operations into startup of production as those terms are defined in 40 CFR 60.5430a (subpart OOOOa). However, to ensure that an operator cannot continue to produce into temporary tanks indefinitely and thus avoid APEN reporting and permitting requirements, this revision clarifies that the end of the flowback is the latest date at which commencement of operation may occur.

This revision also ensures consistency across Colorado's State air regulations, as the revised definition of ''commencement of operation'' in Regulation Number 3 is the same as the federally approved definition of ''commencement of operation'' in Regulation Number 7, Part D, I.D.7.

II. Air Pollution Emission Notice Requirements

(1) II.A.1

This paragraph adds the phrase ''provided in Section II.A.2 below, or as'' to reflect the addition of new paragraph II.A.2. Colorado has withdrawn Section II.A.2 and, as a result, we are not taking action on this revision.

(2) II.A.2.a

As mentioned in Section I. of this action, the addition of this paragraph has been withdrawn by the State of Colorado, thus, this revision will not be acted on. As a result, owners or operators of well production facilities must submit APENs prior to the construction, modification, or alteration of the facility, as specified for all other sources in Section II.A.1, which requires that facilities cannot emit air pollutants from a stationary source unless an APEN and associated fees have been filed with the Division.

In other words, owners and operators of well production facilities must apply for an APEN prior to commencement of operation. APENs require owners or operators to specify the location at which the proposed emission source will occur, the name and address of the persons operating and owning such a facility, the nature of the facility, process or activity, an estimate of the quantity and composition of the expected emissions, among other requirements. Thus, this revision meets the statutory and regulatory requirements as outlined in Section III. of this proposed rulemaking.

(3) II.A.2(b)

This paragraph requires owners or operators of well production facilities to file an APEN prior to the modification of well production facilities. This is a similar requirement as stated in II.A.1. This revision meets the statutory and regulatory requirements as outlined in Section III of this proposed rulemaking.

III. Exemptions From Air Pollution Emission Notice Requirements

(1) Section II.D.1.III

This exemption was repealed to reflect the withdrawal of Part A Section II.A.2.a. Section II.D.1.III. provides that the owner or operator of an oil and gas exploration and production operation shall file an APEN with the Division thirty days after well completion. If production will result in reportable emissions, the owner or operator shall file an APEN within thirty days after the report of first production is filed with the State, but no later than ninety days. As a result of this section being repealed, owners or operators are now required to file an APEN prior to commencement of operations, as required in Part A, Section II.A.1.

B. Revisions to Regulation 3, Part B (Concerning Construction Permits)

II.A—General Requirements for Construction Permits

(1) II.A.1 and III.I.2.a

In Section II.A.1, the phrase ''commence construction of'' is replaced with the phrase ''construct, modify or operate'' and the phrase ''modification of a stationary source'' is replaced by the phrase ''commence the conduct of and such activity.'' Similar language changes were made in Section III.I.2.a.

These language revisions align with the existing language in the Air Pollution Prevention and Control Act

provisions regarding permits (See 25–7–114.2. C.R.S.) These revisions reflect how the Colorado construction permitting program has been operated and implemented, and to ensure consistency with the governing statute. These revisions will not change the timing of the requirement to obtain a construction permit.

II.B—Transfer or Assignment of Ownership

(1) II.B

Colorado revised Section II.B. to clarify that a transfer of ownership form is due to the State within 30 days of the completion of a transfer or assignment of ownership for re-issuing of existing permits. The current language indicates that a ''prospective'' owner must submit the transfer of ownership form, indicating that the form must be submitted prior to acquisition. The revised language provides clarity for sources about this requirement. The language has also been modified to state that the requirements for compliance with existing permitting requirements transfer to the new owner or operator when the forms are submitted.

II.D.—Exemptions From Air Pollution Notice Requirements

(1) II.D.7

Section II.D.7 was repealed to reflect the removal of Part A Section II.A.2.a. Section II.D.7 provides that oil and gas exploration and production operations that are required to obtain a construction permit are not required to file an application for a construction permit until they are required to file an APEN. This section was not extended by the Colorado General Assembly and expired effective May 15, 2021; thus, it is no longer in Regulation Number 3. As a result, all well production facilities must file for a construction permit prior to commencement of operation, as stated in Part A, Section II.A.1.

III.B.—Application for a Construction Permit

(1) III.B.2

The phrase ''or alternate forms required by the division'' was added to this section to give owners or operators additional application form options, as described in Regulation 3, Part A.III.H.1.—General Construction Permits.

(2) III.I.2

The term ''commence construction'' was replaced with the term ''construct, operate.'' This revision clarifies that an owner or operator cannot operate a new or modified source until a general construction permit is received.

C. Additional Exemptions Repealed and Clarifications in Parts A, B and C

(1) Part A, Section II.D.1.zzz and Part C, Section II.E.dddd contain exemptions from filing an APEN and operating permit for venting of natural gas lines for safety purposes. The revisions add that this exemption does not apply to ''routine or predictable emissions at or associated with a stationary source.''

(2) The exemptions in Part A, Section II.D.1.uuu, Part B, Section II.D.1.m, Part C, Section II.E.3.uu and II.E.3.yyy are being revised to no longer exempt oil and gas production wastewater impoundments that contain less than 1 percent by volume crude oil on an annual average from APEN and reporting requirements.

III. Proposed Action

Based on the above discussion, the EPA finds that the repealed and revised sections of Colorado's air permitting regulations outlined in Section II., as submitted by the State of Colorado on May 13, 2020, will not interfere with attainment or maintenance of any national ambient air quality standard (NAAQS) in the State and would not interfere with any other applicable requirement of the CAA. Thus, we are proposing to approve all SIP revisions in this proposed rulemaking, as the revisions to Parts A, B and C corresponding to APEN, construction permitting and operating permitting requirements do not exceed or differ from the requirements of the CAA or Federal regulations; in particular, as outlined below:

(1) The statutory requirements under CAA section 110(a)(2)(c), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved;

(2) The regulatory requirements under 40 CFR 51.160, including § 51.160(a), which require that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or a combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state; § 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and

(3) The statutory requirements under CAA section 110(l), which provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere (''noninterference'') with attainment of the NAAQS, RFP or any other applicable requirement of the CAA.

EPA has determined that these revisions are approvable under CAA 110(a)(2)(C), 40 CFR 51.160–164 and CAA section 110(l). Therefore, we are proposing to approve the revisions as submitted by the State of Colorado on May 13, 2020.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions described in Section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 18, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–06172 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2021–0140; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BG14

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the northern long-eared bat (*Myotis septentrionalis*), a bat species found in all or portions of 37 U.S. States, the District of Columbia, and much of Canada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). The northern long-eared bat is currently listed as a threatened species with an accompanying rule issued under section 4(d) of the Act (''4(d) rule''). This document complies with a court order, which requires the Service to make a new listing decision for the northern long-eared bat. After a review of the best available scientific and commercial information, we find that the northern long-eared bat meets the Act's definition of an endangered species. Accordingly, we propose to list the northern long-eared bat as an endangered species under the Act. If we finalize this rule as proposed, it would reclassify this species as an endangered species on the List of Endangered and Threatened Wildlife and remove its species-specific 4(d) rule. Additionally, this proposed rule serves as our 5-year review of the species. We also are notifying the public that we have scheduled an informational meeting followed by a public hearing on the proposed rule.

DATES: We will accept comments received or postmarked on or before May 23, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational meeting and public hearing: We will hold a public informational meeting from 6:00 p.m. to 7:30 p.m., Central Time, followed by a public hearing from 7:30 p.m. to 8:30 p.m., Central Time, on April 7, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2021–0140. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R3–ES–2021–0140, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Public informational meeting and public hearing: The public informational meeting and the public hearing will be held virtually using the Zoom platform. See *Public Hearing,* below, for more information.

FOR FURTHER INFORMATION CONTACT: Shauna Marquardt, Field Supervisor, U.S. Fish and Wildlife Service, Minnesota Wisconsin Ecological Services Field Office, 4101 American Boulevard East, Bloomington, MN 55425; telephone 952–252–0092. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as a threatened species instead of reclassified as an endangered species, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3). See **DATES** and **ADDRESSES** for information on a public hearing that we have scheduled for this rulemaking action.

Previous Federal Actions

On October 2, 2013, we proposed to list the northern long-eared bat as an endangered species under the Act (78 FR 61046); please refer to that proposed rule for a detailed description of previous Federal actions concerning this species.

On January 16, 2015, we proposed to create a 4(d) rule to provide measures that are necessary and advisable to provide for the conservation of the northern long-eared bat should we determine the species warrants listing as a threatened species under the Act (80 FR 2371). That document also reopened the public comment period on the October 2, 2013, proposed rule for another 60 days, ending on March 17, 2015.

On April 2, 2015, we finalized a rule listing the northern long-eared bat as a threatened species and established an interim 4(d) rule for the species (80 FR 17974). We solicited public comment on the interim 4(d) rule for 90 days, ending on July 1, 2015. On January 14, 2016, we finalized the 4(d) rule for the northern long-eared bat (81 FR 1900). On April 27, 2016, we published a not-prudent determination for critical habitat (81 FR 24707).

A January 28, 2020, court order requires the Service to make a new listing decision for the northern long-eared bat (*Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d. 69 (D.D.C. 2020)). The court order remanded our April 2, 2015, listing decision (80 FR 17974) but did not vacate that rule. This document complies with the court order.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the northern long-eared bat (Service 2021, entire). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five species experts regarding the SSA report. We received responses from three of the five experts. We also sent the SSA report to approximately 150 State, Federal, Tribal, and other (for example, nongovernmental organizations) partners with expertise in bat biology or threats to the species for review. We received reviews from approximately 35 partners.

Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the northern long-eared bat is presented in the SSA report (Service 2021, entire).

The northern long-eared bat is a wide-ranging bat species found in 37 States (Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming), the District of Columbia, and 8 Canadian provinces. The species typically overwinters in caves or mines and spends the remainder of the year in forested habitats. As its name suggests, the northern long-eared bat is distinguished by its long ears, particularly as compared to other bats in its genus, *Myotis.* The bat is medium to dark brown on its back, with dark brown ears and wings, and tawny to pale-brown fur on its ventral side. Its weight ranges from approximately 5 to 8 grams (0.2 to 0.3 ounces). Female northern long-eared bats produce a maximum of one pup per year;

therefore, loss of one pup results in missing one year of recruitment for a female.

The individual, population-level, and species-level needs of the northern long-eared bat are summarized below in tables 1–3. For additional information, please see the SSA report (Service 2021, chapter 2).

TABLE 1—THE ECOLOGICAL REQUISITES FOR SURVIVAL AND REPRODUCTIVE SUCCESS OF NORTHERN-LONG-EARED BAT INDIVIDUALS

Life stage	Season			
	Spring	Summer	Fall	Winter
Pups (non-flying juveniles).	.....	Roosting habitat with suitable conditions for lactating females and for pups to stay warm and protected from predators while adults are foraging.		
Juveniles	.....	Other maternity colony members (colony dynamics, thermoregulation), and suitable roosting and foraging habitat near abundant food and water resources.	Suitable roosting and foraging habitat near abundant food and water resources.	Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal.
All adults	Suitable roosting and foraging habitat near abundant food and water resources, and habitat connectivity and open-air space for safe migration between winter and summer habitats.	Summer roosts and foraging habitat near abundant food and water resources.	Suitable roosting and foraging habitat near abundant food and water resources, cave and/or mine entrances or other similar locations (for example, culvert, tunnel) for conspecifics to swarm and mate, and habitat connectivity and open-air space for safe migration between winter and summer habitats.	Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal.
Reproductive females	.....	Other maternity colony members (colony dynamics), a network of suitable roosts (*i.e.,* multiple summer roosts in close proximity) near conspecifics, and foraging habitat near abundant food and water resources.		

TABLE 2—POPULATION-LEVEL REQUISITES FOR A HEALTHY NORTHERN LONG-EARED BAT POPULATION

Parameter	Requirements
Population growth rate, λ	At a minimum, λ must be ≥ 1 for a population to remain stable over time.
Population size, N	Sufficiently large N to allow for essential colony dynamics and to be adequately resilient to environmental fluctuations.
Winter roosting habitat	Safe and stable winter roosting sites with suitable microclimates.
Migration habitat	Safe space to migrate between spring/fall habitat and winter roost sites.
Spring and fall roosting, foraging, and commuting (*i.e.,* traveling between habitat types) habitat.	A matrix of habitat of sufficient quality and quantity to support bats as they exit hibernation (lowest body condition) or as they enter hibernation (need to put on body fat).
Summer roosting, foraging, and commuting habitat	A matrix of habitat of sufficient quality and quantity to support maternity colonies.

TABLE 3—SPECIES-LEVEL ECOLOGY: REQUISITES FOR LONG-TERM VIABILITY

[Ability to maintain self-sustaining populations over a biologically meaningful timeframe]

3 Rs	Requisites for long-term viability	Description
Resiliency (populations able to withstand stochastic events).	Healthy populations across a diversity of environmental conditions.	Self-sustaining populations are demographically, genetically, and physiologically robust, and have enough suitable habitat.
Redundancy (number and distribution of populations to withstand catastrophic events).	Multiple and sufficient distribution of populations within areas of unique variation (representation units).	Sufficient number and distribution of populations to guard against population losses.
Representation (genetic and ecological diversity to maintain adaptive potential).	Maintain adaptive diversity of the species	Populations maintained across a range of behavioral, physiological, ecological, and environmental diversity.
	Maintain evolutionary processes	Maintain evolutionary drivers—gene flow, natural selection—to mimic historical patterns.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the northern long-eared bat, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R3–ES–2021–0140 on *https://www.regulations.gov.*

To assess the northern long-eared bat's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry or warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the northern long-eared bat and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. For a full description, see the SSA report (Service 2021, entire).

Although there are other stressors affecting the northern long-eared bat, the primary factor influencing its viability is white-nose syndrome (WNS), a disease of bats caused by a fungal pathogen. Some of the other factors that influence the northern long-eared bat's viability (though to a far lesser extent than the influence of WNS) include wind energy mortality, effects from climate change, and habitat loss. These stressors and their effects to the northern long-eared bat are summarized below:

- WNS has been the foremost stressor on the northern long-eared bat for more than a decade. The fungus that causes the disease, *Pseudogymnoascus destructans* (*Pd*), invades the skin of bats. Infection leads to increases in the frequency and duration of arousals during hibernation and eventual depletion of fat reserves needed to survive winter, and results in mortality. Since its discovery in New York in 2006, *Pd* has been confirmed (or presumed) in 37 States and 7 Canadian provinces. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range.
- Wind energy-related mortality of the northern long-eared bat is a stressor at local and regional levels, where northern long-eared bat populations have been impacted by WNS. In 2020, northern long-eared bats were at risk from wind mortality in approximately 49 percent of their range, based on the areas where wind turbines were in place and operating (using known northern long-eared bat occurrences, average migration distance, and the spatial distribution of wind turbines) (Service 2021, p. iv). Most bat mortality at wind energy projects is caused by direct collisions with moving turbine blades.
- Climate change variables, such as changes in temperature and precipitation, may influence the northern long-eared bat's resource needs, such as suitable roosting habitat for all seasons, foraging habitat, and prey availability. Although a changing climate may provide some benefit to the northern long-eared bat, overall negative impacts are anticipated, especially at local levels.
- Habitat loss (including but not limited to forest conversion or hibernacula disturbance or destruction) may include loss of suitable roosting or foraging habitat, resulting in longer flights between suitable roosting and foraging habitats due to habitat fragmentation, fragmentation of maternity colony networks, and direct injury or mortality. Loss or modification of winter roosts (*i.e.,* making hibernaculum no longer suitable) can result in impacts to individuals or at the population level. However, habitat loss alone is not considered to be a key stressor at the species level, and habitat does not appear to be limiting.

In evaluating current conditions of the northern long-eared bat, we used the best available data. Winter hibernacula counts provide the most consistent, long-term, reliable trend data and provide the most direct measure of WNS impacts. We also used summer data in evaluating population trends, although the availability and quality of summer data varies temporally and spatially.

Available evidence, including both winter and summer data, indicates northern long-eared bat abundance has and will continue to decline substantially under current demographic and stressor conditions, primarily driven by the effects of WNS. As part of our assessment of the current condition of northern long-eared bat's representation, we identified and delineated the variation across the northern long-eared bat's range into geographical representation units (RPUs) using the following proxies: Variation in biological traits, genetic diversity, peripheral populations, habitat niche diversity, and steep environmental gradients.

Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent). The number of extant winter colonies also declined rangewide (by 81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥100 individuals) across the RPUs (figure 1.). We created projections (highest plausible and lowest plausible scenarios) for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent to decline by 75 percent from historical conditions by 2030. Declines continue to be driven by the catastrophic effects of WNS.

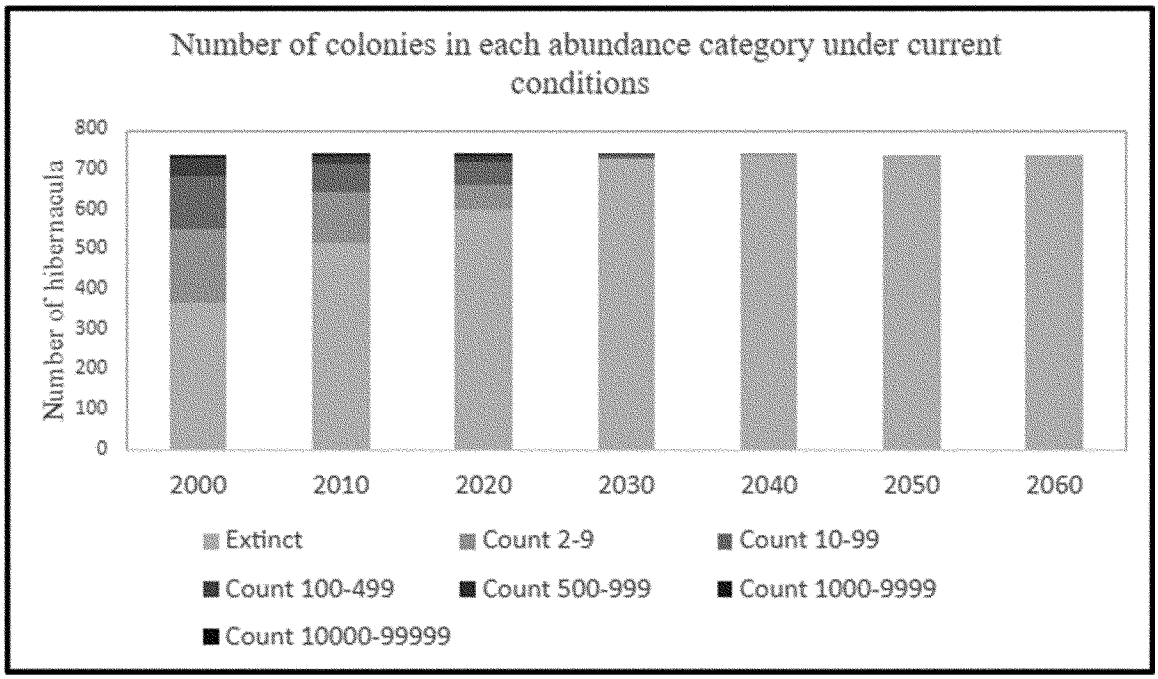

Figure 1. The number of hibernacula in each colony abundance category under current conditions.

Declining trends in abundance and extent of occurrence are also evident across much of the northern long-eared bat's summer range. Rangewide occupancy has declined by 80 percent from 2010–2019. Data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates.

As discussed above, multiple data types and analyses indicate downward trends in northern long-eared bat population abundance and distribution over the last 14 years, and the best available information indicates that this downward trend will continue. Northern long-eared bat abundance (winter and summer), number of occupied hibernacula, spatial extent, and summer habitat occupancy across the range and within all RPUs are decreasing. Since the occurrence of WNS, northern long-eared bat abundance has steeply declined, leaving populations with small numbers of individuals. At these low population sizes, colonies are vulnerable to extirpation from stochastic events and the deleterious effects of reduced population sizes such as limiting natural selection processes and decreased genetic diversity. Furthermore, small populations generally cannot rescue one another from such a depressed state because of the northern long-eared bat's low reproduction output (one pup per year) and its high philopatry (tending to return to a particular area). These inherent life-history traits limit the ability of populations to recover from low abundances. Consequently, effects of small population sizes exacerbate the effects of current and future declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change.

Therefore, northern long-eared bat's resiliency is greatly compromised in its current condition. Because northern long-eared bat's abundance and spatial extent have so dramatically declined, it has also become more vulnerable to catastrophic events. In other words, its redundancy has also declined dramatically. The steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced northern long-eared bat adaptive capacity, and a decline in the species' overall representation. Moreover, at its current low abundance, loss of genetic diversity will likely accelerate. Consequently, limited natural selection processes and decreased genetic diversity will further lessen the species' ability to adapt to novel changes and exacerbate declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change. Thus, even without further WNS spread and additional wind energy development (northern long-eared bat's current condition), its viability is likely to continue to rapidly decline over the next 10 years.

Future Condition

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the northern long-eared bat. Our scenarios included a plausible highest impact scenario and a plausible lowest impact scenario for each primary threat. Because we determined that the current condition of the northern long-eared bat is consistent with an endangered species (see Determination of Species Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2021) for the full analysis of future scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors

that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Below is a brief description of conservation measures and regulatory mechanisms currently in place. Please see the SSA report for a more detailed description (Service 2021, Appendix 4).

Multiple national and international efforts are underway in an attempt to reduce the impacts of WNS. Despite these efforts, there are no proven measures to reduce the severity of impacts of WNS. More than 100 State and Federal agencies, Tribes, organizations, and institutions are engaged in this collaborative work to combat WNS and conserve affected bats. Partners from all 37 States in the northern long-eared bat's range, Canada, and Mexico are engaged in collaborations to conduct disease surveillance, population monitoring, and management actions in preparation for or response to WNS.

To reduce bat fatalities, some wind facilities ''feather'' turbine blades (*i.e.,* pitch turbine blades parallel with the prevailing wind direction to slow rotation speeds) at low wind speeds at times when bats are more likely to be present. The wind speed at which the turbine blades begin to generate electricity is known as the ''cut-in speed,'' and this can be set at the manufacturer's recommended speed or at a higher threshold, typically referred to as curtailment. The effectiveness of feathering below various cut-in speeds differs among sites and years (Arnett et al. 2013, entire; Berthinussen et al. 2021, pp. 94–106); nonetheless, most studies have shown all-bat (based on dead bats detected from all bat species) fatality reductions of greater than 50 percent associated with raising cut-in speeds by 1.0–3.0 meters per second (m/s) above the manufacturer's cut-in speed (Arnett et al. 2013, entire; USFWS unpublished data). The effectiveness of curtailment at reducing fatality rates specifically for the northern long-eared bat has not been documented.

All States have active forestry programs with a variety of goals and objectives. Several States have established habitat protection buffers around known Indiana bat hibernacula that will also serve to benefit other bat species by maintaining sufficient quality and quantity of swarming habitat. Some States conduct some of their forest management activities in the winter within known listed bat home ranges as a measure that would protect maternity colonies and non-volant (non-flying) pups during summer months. Depending on the type and timing of activities, forest management can be beneficial to bat species (for example, maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogeneous (including forest type, age, and structural characteristics) habitat may benefit tree-roosting bat species such as northern long-eared bat (Silvis et al. 2016, p. 37). Silvicultural practices can meet both male and female northern long-eared bats' roosting requirements by maintaining large-diameter snags in early stages of decay, while allowing for regeneration of forests (Lacki and Schwierjohann 2001, p. 487).

Many State and Federal agencies, conservation organizations, and land trusts have installed bat-friendly gates to protect important hibernation sites. All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service (USFS) are closed during the winter hibernation period, primarily due to the threat of WNS, although this will reduce disturbance to bats in general inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammalogists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield *et al.* 1992, p. 707). Also, regulations, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*), protect caves on Federal lands by limiting access to some caves, thereby reducing disturbance. Finally, many Indiana bat hibernacula have been gated, and some have been permanently protected via acquisition or easement, which provides benefits to other bats that also use the sites, including the northern long-eared bat.

The northern long-eared bat is listed as endangered under Canada's Species at Risk Act (COSEWIC 2013, entire). In addition, the northern long-eared bat receives varying degrees of protection through State laws, which designate the species as endangered in 9 States (Arkansas, Connecticut, Delaware, Indiana, Maine, Massachusetts, Missouri, New Hampshire, and Vermont); as threatened in 10 States (Georgia, Illinois, Louisiana, Maryland, New York, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin); and as a species of special concern in 10 States (Alabama, Iowa, Michigan, Minnesota, Mississippi, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming).

Determination of Northern Long-Eared Bat Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

WNS has been the foremost stressor on the northern long-eared bat for more than a decade and continues to be currently. The fungus that causes the disease, *Pd,* invades the skin of bats and leads to infection that increases the frequency and duration of arousals during hibernation that eventually deplete the fat reserves needed to survive winter and results in mortality. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range (Factor C). Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent), and the number of extant winter colonies also declined rangewide (81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥100 individuals). Rangewide summer occupancy has

declined by 80 percent from 2010–2019. Summer data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates. We created projections for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent is projected to decline by 75 percent from historical conditions by 2030.

As a result of these steep population declines, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent substantially declined, its redundancy has decreased such that northern long-eared bats are more vulnerable to catastrophic events. The northern long-eared bat's representation has also been reduced, as the steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity. Further, the projected widespread reduction in the distribution of occupied hibernacula under current conditions will lead to losses in the diversity of environments and climatic conditions occupied, which will impede natural selection and further limit the northern long-eared bat's ability to adapt to changing environmental conditions. Moreover, at its current low abundance, loss of genetic diversity via genetic drift will likely accelerate. Consequently, limiting natural selection process and decreasing genetic diversity will further lessen the northern long-eared bat's ability to adapt to novel changes (currently ongoing as well as future changes) and exacerbate declines due to continued exposure to WNS and other stressors. Thus, even without further *Pd* spread and additional pressure from other stressors, the northern long-eared bat's viability has declined substantially and is expected to continue to rapidly decline over the near term.

Current population trends and status indicate this species is currently in danger of extinction. The species continues to experience the catastrophic effects of WNS and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions. Therefore, the species meets the Act's definition of an endangered species rather than of a threatened species. Thus, after assessing the best available information, we determine that the northern long-eared bat is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the northern long-eared bat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the northern long-eared bat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the Act's definition of an endangered species. Therefore, we propose to list the northern long-eared bat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline, and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/species/northern-bat-myotis-septentrionalis*), or from our Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

For listed species, funding for recovery actions is available from a

variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming will continue to be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the northern long-eared bat occurs in a variety of habitat conditions across its range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the species.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Incidental take of the species without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Disturbance or destruction (or otherwise making a hibernaculum no longer suitable) of known hibernacula due to commercial or recreational activities during known periods of hibernation.

(4) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.

(5) Unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the northern long-eared bat that results in take of the species.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized building and operation of wind energy facilities within areas used by the species, which results in take of the species.

(9) Unauthorized discharge of chemicals, fill, or other materials into sinkholes, which may lead to contamination of known northern long-eared bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Effects of This Rule

If this rule is adopted as proposed, it would reclassify the northern long-eared bat from a threatened species to an endangered species on the List of Endangered and Threatened Wildlife. It would also remove the species-specific section 4(d) rule for the northern long-eared bat, because 4(d) rules apply only to species listed as threatened species under the Act. The Act's full suite of prohibitions and exceptions to those prohibitions for endangered species (see sections 9 and 10 of the Act) would then apply to the northern long-eared bat.

Public Hearings

We have scheduled a public informational meeting with a public hearing on this proposed rule for the northern long-eared bat. We will hold the public informational meeting and public hearing on the date and time listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/species/northern-bat-myotis-septentrionalis.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not: It is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing *https://www.fws.gov/species/northern-bat-myotis-septentrionalis.* The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information, provided updates, and invited participation in the SSA process in emails sent to Tribes, nationally, in April 2020 and November 2020. We will continue to work with Tribal entities during the development of the northern long-eared bat final listing determination.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Fish and Wildlife Service's Species Assessment Team and the Minnesota Wisconsin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), by revising the entry for ''Bat, northern long-eared'' under MAMMALS in the

List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	* * *
Bat, northern long-eared.	*Myotis septentrionalis*	Wherever found	E	80 FR 17973, 4/2/2015; [**Federal Register** citation when published as a final rule].
*	*	*	*	* * *

§ 17.40 [Amended]

■ 3. Amend § 17.40 by removing and reserving paragraph (o).

Signing Authority

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Director, approved this document on March 18, 2022, for publication.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2022–06168 Filed 3–22–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 56
Wednesday, March 23, 2022

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

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–902]

Organic Soybean Meal From India: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of organic soybean meal from India.

DATES: Applicable March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, 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) 482–5484.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2021, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] In the *Preliminary Determination,* and in accordance with section 705(a)(1) of the Tariff Act of 1930 as amended (the Act), and 19 CFR 351.210(b)(4), Commerce aligned the final determination of this CVD investigation with the final determination in the companion antidumping duty investigation of organic soybean meal from India. On December 8, 2021, Commerce released its Post-Preliminary Analysis.[2] For a complete description of the events that followed the *Preliminary Determination* and Post-Preliminary Analysis, *see* the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is organic soybean meal from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, Commerce did not receive scope comments from any interested parties. Thus, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination. See* Appendix I for the final scope of the investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on the facts otherwise available on the record pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because the Government of India and various producers or exporters of subject merchandise did not act to the best of their abilities in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. For further information, see the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy rate calculations for Bergwerff Organic India Private Limited (Bergwerff), All Others rate and the calculation of AFA rates. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In this investigation, the only individually calculated rate that is not

[1] *See Organic Soybean Meal from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 49514 (September 3, 2021) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Post-Preliminary Analysis Memorandum,'' dated December 8, 2021.

[3] *See* Memorandum, ''Issues and Decisions Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Organic Soybean Meal from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decisions Memorandum).

[4] *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.

[5] *See* Commerce's Letter, ''Countervailing Duty Investigation of Organic Soybean Meal From India: In Lieu of On-Site Verification Questionnaire,'' dated December 15, 2021; *see also* Bergwerff's Letter, ''Organic Soybean Meal From India: In Lieu of Onsite Verification Questionnaire Response,'' dated December 22, 2021.

zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Bergwerff. Consequently, the rate calculated for Bergwerff is also assigned as the rate for all other producers and exporters not individually examined in this investigation.

Final Determination

Commerce determines the total estimated net countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Bergwerff Organic India Private Limited [6]	9.57
Shanti Worldwide	283.91
Shri Sumati Oil Industries Pvt. Ltd	283.91
Navjyot International Pvt. Ltd	283.91
Ish Agritech Pvt. Ltd [7]	283.91
Satguru Organics Pvt. Ltd [8]	283.91
Radiance Overseas [9]	283.91
Swastik Enterprises [10]	283.91
Soni Soya Products Limited [11]	283.91
Raj Foods International [12]	283.91
Vantage Organic Foods Pvt. Ltd [13]	283.91
Shree Bhagwati Oil Mill [14]	283.91
Pragati Organics [15]	283.91
All Others	9.57

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after September 3, 2021, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective January 1, 2022, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries from September 3, 2021, through December 31, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of organic soybean meal from India. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: March 17, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to the investigation is certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybeans into ground products known as soybean cake, soybean chips, or soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. ''Certified organic soybean meal'' is certified by the U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards or NOP-equivalent

[6] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Bergwerff: Suminter India Organics Private Limited.

[7] *See* Preliminary Decision Memorandum at section VII, ''Use of Facts Otherwise Available and Adverse Inferences.''

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

standards under an existing organic equivalency or recognition agreement.

Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.

Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation.

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1020, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, and 2308.00.9890.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Decision Memorandum:

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Facts Otherwise Available and Adverse Inferences: Non-Cooperative and Non-Responsive Companies
V. Subsidies Valuation
VI. Analysis of Programs
VII. Analysis of Comments
Comment 1: Whether Bergwerff Failed to Identify an Affiliated Supplier
Comment 2: Whether Commerce Should Apply Adverse Facts Available (AFA) to Bergwerff for Failing to Report Use of an Export Promotion Scheme
Comment 3: Whether Commerce Should Countervail the Duty Drawback Benefits Received by Bergwerff for Organic Soybeans
Comment 4: Whether Commerce Should Have Selected Additional Respondents for Individual Examination in this Investigation
Comment 5: Whether Commerce Should Apply Total AFA to Shanti Overseas (India) Ltd.
Comment 6: Whether Commerce Should Recalculate the Benefits Received Under the Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material, and Exemption from Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
Comment 7: Whether Commerce Should Countervail the Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials
Comment 8: Whether Commerce Should Recalculate the Benefits Received Under the Merchandise Export Incentive Scheme (MEIS) Program
Comment 9: Whether Commerce Should Countervail the Pre-Shipment and Post-Shipment Export Financing Program
Comment 10: Whether Commerce Assigned the AFA Rate Twice for the SGMP Exemption from Electricity Duty and Cess on Electricity Supplied to a Special Economic Zone (SEZ) Unit Program
Comment 11: Whether Commerce Should Countervail the Advance Authorization Program (AAP) and the Duty Drawback (DDB) Program
Comment 12: Whether Commerce Should Apply AFA to the Non-Cooperative Mandatory Respondents that Withdrew from Participation in the Investigation
Comment 13: Whether Commerce Should Apply AFA to the Government of India (GOI)
Comment 14: Whether Commerce Correctly Initiated the Transportation and Marketing Assistance (TMA) for Special Agriculture Products
VIII. Recommendation

[FR Doc. 2022–06155 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Section Membership Opportunities for the United States-India CEO Forum

AGENCY: International Trade Administration (ITA), Department of Commerce.

ACTION: Notice.

The Department of Commerce, ITA, is amending the Notice published at 87 FR 9318 (February 18, 2022), regarding the dates for submission of applications for appointment, or reappointment, to the U.S. Section of the U.S.-India CEO Forum. ITA will accept applications on a rolling basis for membership on the U.S. Section of the Forum for terms that will begin upon appointment and will expire on December 31, 2024. Immediate consideration will now be given to applications received by April 6, 2022. ITA will accept nominations under this notice on an on-going basis during the charter term to fill vacancies as they arise.

ADDRESSES: For inquiries and an application, please contact Noor Sclafani, International Trade Specialist, Office of South Asia, U.S. Department of Commerce, by email at *noor.sclafani@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Noor Sclafani, International Trade Specialist, Office of South Asia, U.S. Department of Commerce, telephone: (202) 823–1840.

SUPPLEMENTARY INFORMATION: Please refer to Notice published at 87 FR 9318 (February 18, 2022).

Dated: March 18, 2022.

Jed Diemond,

Deputy Director, Office of South Asia.

[FR Doc. 2022–06164 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, In Part, of the 26th Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) has completed its administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China) for the period of review (POR) November 1, 2019, through October 31, 2020. We determine that mandatory respondent, Jining Shunchang Import & Export Co., Ltd. (Shunchang) failed to establish its eligibility for a separate rate and, therefore, is part of the China-wide entity. We are rescinding the review with respect to Zhengzhou Harmoni Spice Co., Ltd. (Harmoni).

DATES: Applicable March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Saude, 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) 482–0981.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2021, Commerce published the preliminary results of the twenty-sixth administrative review of fresh garlic from China.[1] No interested party submitted comments concerning the *Preliminary Results* or requested that a hearing be held. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 26th Antidumping Duty Administrative Review; 2019–2020,* 86 FR 67911 (November 30, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

The current deadline for the final results is March 30, 2022.

Scope of the Order

The products subject to the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700, of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is: (1) Mechanically harvested and primarily, but not exclusively, destined for nonfresh use; or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Final Partial Rescission of Administrative Review

In the *Preliminary Results,* Commerce determined that the review request from Roots Farm for Harmoni was invalid *ab initio,* and it preliminarily rescinded the administrative review with respect to Harmoni. Because Commerce did not receive any comments on its preliminary finding, Commerce continues to find that the review request from Roots Farm was invalid *ab initio,* and Commerce is rescinding this review with respect to Harmoni.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[2] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, and Commerce did not self-initiate a review, the entity is not under review and the entity's rate (*i.e.,* $4.71/kg) is not subject to change. Aside from the companies for which the review has been or is being rescinded, Commerce considers all other companies for which a review was requested, and which did not preliminarily qualify for a separate rate, to be part of the China-wide entity.

Final Results of Administrative Review

Commerce determines that the following weighted-average dumping margin exists for the administrative review covering the period November 1, 2019, through October 31, 2020:

Exporter	Weighted-average margin (dollars per kilogram)
China-Wide Entity[3]	4.71

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to direct CBP to assess rates based on the per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. Commerce also intends to issue assessment instructions no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by sections 751(a)(2) of the Act: (1) For the companies identified in the chart above, the cash deposit rate will be the China-wide rate; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 4.71 U.S. dollars per kilogram; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter that supplied that non-Chinese exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notifications Regarding Administrative Protection Order

This notice 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections

[2] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[3] The companies that are part of the China-wide entity in this review are Jining Shunchang Import & Export Co., Ltd. and Jining Shunchang Food Co., Ltd.

751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: March 14, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–06076 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–806]

Stainless Steel Plate in Coils From South Africa: Final Results of the Expedited Fourth Five-Year Sunset Review of the Countervailing Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on stainless steel plate in coils (SSPC) from South Africa would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, 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) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1999, Commerce published in the **Federal Register** a notice of the CVD order on SSPC from South Africa.[1] On December 1, 2021, Commerce published the notice of initiation of the fourth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On December 15, 2021, Commerce received notices of intent to participate from ATI Flat Rolled Products Holdings, LLC (ATI) and Outokumpu Stainless USA LLC (Outokumpu) (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as domestic producers of SSPC in the United States.

On January 3, 2022, Commerce received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] Commerce did not receive a substantive response from either the Government of South Africa or a respondent interested party to this proceeding. On January 20, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise subject to the *Order* is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of the *Order* are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to the *Order* is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the *Order* is dispositive.[6]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached 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), which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

[1] *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa,* 64 FR 25288 (May 11, 1999) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[3] *See* ATI's Letter, ''Five-Year (Sunset) Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from South Africa—Domestic Interested Party's Notice of Intent to Participate,'' dated December 15, 2021; *see also* Outokumpu's Letter, ''Five-Year (Sunset) Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from South Africa—Outokumpu's Notice of Intent to Participate,'' dated December 15, 2021.

[4] *See* Domestic Interested Parties' Letter, ''Five-Year (Sunset) Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from South Africa—Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated January 3, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated On December 1, 2021,'' dated January 20, 2022.

[6] For a complete discussion of the scope, *see* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Fourth Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from South Africa,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Producer/exporter	Subsidy rate (percent ad valorem
Columbus Stainless Steel Company (the operating division of the Columbus Joint Venture) ..	3.95
All Others	3.95

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
  2. Net Countervailable Subsidy Likely to Prevail
  3. Nature of the Subsidy
VII. Final Results of the Sunset Review
VIII. Recommendation.

[FR Doc. 2022–06075 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–901]

Organic Soybean Meal From India: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that organic soybean meal from India is being, or is likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, 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) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2021, Commerce published the *Preliminary Determination* in this investigation.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is organic soybean meal from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[3]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculations for Bergwerff Organic India Private Limited (Bergwerff), the sole cooperative respondent in this investigation, after the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. Commerce

[1] *See Organic Soybean Meal from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 60443 (November 2, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Organic Soybean Meal from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Commerce's Letter, ''Organic Soybean Meal from India Antidumping Duty Investigation: Questionnaire in Lieu of Verification,'' dated January 7, 2022; *see also* Bergwerff's Letter, ''Organic Soybean Meal from India: In Lieu of Onsite Verification Questionnaire Response,'' dated January 19, 2022.

calculated an individual estimated weighted average dumping margin for Bergwerff, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Bergwerff is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Bergwerff Organic Private Limited/Suminter India Organic Private Limited	3.07	0.00
Shanti Worldwide	*18.80	9.26
Shri Sumati Oil Industries Pvt. Ltd	*18.80	9.26
Navjyot International Pvt. Ltd	*18.80	9.26
Ish Agritech Pvt. Ltd	*18.80	9.26
Satguru Organics Pvt. Ltd	*18.80	9.26
Radiance Overseas	*18.80	9.26
Swastik Enterprises	*18.80	9.26
Soni Soya Products Limited	*18.80	9.26
Raj Foods International	*18.80	9.26
Vantage Organic Foods Pvt. Ltd	*18.80	9.26
Shree Bhagwati Oil Mill	*18.80	9.26
Pragati Organics	*18.80	9.26
All Others	3.07	0.00

* (Facts available with an adverse inference).

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of organic soybean meal, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after November 2, 2022, the date of publication of the *Preliminary Determination* in this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

In the event that a countervailing duty (CVD) order is issued, and suspension of liquidation is resumed in the companion CVD investigation of soybean meal from India, Commerce will instruct CBP to require, for this antidumping duty investigation, cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion CVD investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the estimated weighted-average dumping margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: March 17, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to the investigation is certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybeans into ground products known as soybean cake, soybean chips, or soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. ''Certified organic soybean meal'' is certified by the U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards or NOP-equivalent standards under an existing organic equivalency or recognition agreement.

Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.

Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation. The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1020, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, and 2308.00.9890.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Facts Otherwise Available and Adverse Inferences: Non-Cooperative and Non-Responsive Companies
V. Changes Since the Preliminary Determination
VI. Analysis of Comments
Comment 1: Certain Direct Selling Expenses
Comment 2: Bergwerff's Affiliation with a Certain Supplier
Comment 3: Bergwerff's Affiliation with Supplying Farmers
Comment 4: Bergwerff Allegedly Used Non-Organic Soybeans
Comment 5: Whether AFA is Warranted for Bergwerff
Comment 6: AFA for Non-Cooperative Selected Mandatory Respondents and Affiliates
Comment 7: AFA Rate
Comment 8: AFA Rate Subsidy Offset
VII. Recommendation

[FR Doc. 2022–06154 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Northeast Multispecies Reporting Requirements.

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 17, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Northeast Multispecies Reporting Requirements

OMB Control Number: 0648–0605.

Form Number(s): None.

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

Number of Respondents: 1,339.

Average Hours per Response: Sector Operations Plan & Annual Membership List Updates, 110 hours; Monitoring & Reporting Service Providers Application & Response to Denial, 10 hours; Monitoring System (database) for Discards, Sector Manager Weekly Catch Reports & Annual Reports, 18 minutes; Notification of Ejection from Sector; 30 minutes; Transfer of Annual Catch Entitlement between Sectors, 5 minutes; Area & DAS Declaration—Groundfish Vessels Fishing under any NE Multispecies DAS, 5 minutes; VMS Daily Catch Reports—Average 5-day Length Trips, 15 minutes; Catch Reporting Requirements: US/Canada Area, CA II SAPs, Close Area I SAP, and Regular B Program, 15 minutes; At-Sea Monitoring & Reporting Requirements—Notifications & Database Requirements & Monitoring Costs, 24 minutes; NE Fishery Observer Notification, 5 minutes; Trip Start/End Hails, 5 minutes; DAS Transfer Program, 5 minutes; Submission of Proposed Special Access Program (SAP), 20 hours; Northwest Atlantic Fisheries Organization (NAFO) Reporting Requirements, 22.75 hours; DAS Leasing Request Form, 5 minutes; DAS Downgrade Request, 5 minutes; VMS Trip Catch Reports—1 Day or Less Trips, 15 minutes; Electronic Monitoring Program Requirements, 9 hours; NAFO—Daily Observer Catch Report Information, 6 minutes.

Total Annual Burden Hours: 196,983.

Needs and Uses: This request is for the revision and extension of a current information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. We, National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS), and the Regional Fishery Management Councils are delegated the majority of this responsibility. The New England Fishery Management Council (Council) develops management plans for fishery resources in New England.

In 2010, we implemented a new suite of regulations for the Northeast (NE) multispecies fishery through Amendment 16 to the NE Multispecies Fishery Management Plan (FMP). This action updated status determination criteria for all regulated NE multispecies or ocean pout stocks; adopted rebuilding programs for NE multispecies (groundfish) stocks newly classified as being overfished and subject to overfishing; revised management measures, including significant revisions to the sector management measures (established under Amendment 13) necessary to end overfishing, rebuild overfished regulated NE multispecies and ocean pout stocks, and mitigate the adverse economic impacts of increased effort controls. It also implemented new requirements under Amendment 16 for establishing acceptable biological catch, annual catch limits (ACLs), and accountability measures for each stock managed under the FMP, pursuant to the Magnuson-Stevens Act.

Sectors are a management tool in the groundfish fishery. A sector consists of three or more limited access NE multispecies vessel permits, with distinct ownership, who voluntarily enter into a contract to manage their fishing operations and to share liability.

A sector is granted an annual allocation of most stocks of fish managed by the NE Multispecies FMP. In return for increased operational flexibility, such as exemptions from certain effort controls and the ability to pool and trade quota, sectors have additional reporting and monitoring requirements. The sector reporting and monitoring requirements, as established by Amendment 16 and revised by subsequent framework adjustments to the NE Multispecies FMP, are contained within this information collection.

This revision incorporates a number of recent changes. Amendment 16 required sectors to develop and fund an independent third-party at-sea monitoring (ASM) program. Amendment 16 allowed sectors to use electronic monitoring (EM) instead of human monitors to meet ASM requirements, provided that the Greater Atlantic Regional Administrator deemed it sufficient. Using the authority and process granted to the agency in Amendment 16, NMFS announced its determination that sectors may use EM to meet monitoring requirements (86 FR 16686; March 31, 2021). To implement this change, we are proposing to collect additional data elements necessary to support an electronic monitoring program. Specifically, we propose to require the development and submission of vessel monitoring plans and trip-level feedback reports, both of which are critical for accurate catch data and management of ACLs. We also propose to require the collection of information related to the purchase and installation of EM equipment. This is necessary for NMFS to reimburse industry's ASM costs as directed and funded by Congressional appropriations.

In 2020, the Northwest Atlantic Fisheries Organization (NAFO) established a new requirement that vessels fishing in the NAFO Regulatory Area must submit daily catch reports via a vessel monitoring system (VMS) and NMFS implemented this requirement to ensure compliance with NAFO reporting requirements. Daily VMS catch reports allow for near real-time quota monitoring and are necessary for the management of ACLs.

This revision removes information collections related to VMS activation confirmation responses, time and costs, and the cost of purchase, maintenance and automated polling, which was transferred to OMB control number 0648–0202. This revision also removes the Closed Area I Hook Gear Haddock SAP from the US/Canada Area and CA II SAPS, Closed Area I SAP and Regular B Program catch reporting estimates because NMFS removed the regulations implementing this SAP after it was eliminated as part of the Omnibus Essential Fish Habitat Amendment 2 (85 FR 19129; April 6, 2020).

Affected Public: Business or other for-profit organizations.

Frequency: Frequency varies from collection to collection (*e.g.,* annual, per trip, weekly).

Respondent's Obligation: Obligation varies from collection to collection (*e.g.,* mandatory, voluntary, required to retain benefits).

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

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

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0605.

Sheleen Dumas,

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

[FR Doc. 2022–06169 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Pacific Islands Logbook Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 14, 2021 (86 FR 71043) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: NOAA National Marine Fisheries Service (NMFS), Commerce.

Title: Pacific Islands Logbook Family of Forms.

OMB Control Number: 0648–0214.

Form Number(s): None.

Type of Request: Regular Submission (revision of a currently approved collection).

Number of Respondents: 599.

Average Hours per Response: 0.27 hours.

Total Annual Burden Hours: 6,911.

Needs and Uses: Vessel operators or owners in Federally-managed fisheries in the Pacific Islands Region are required to provide certain information about their fishing activities, catch, and interactions with protected species by submitting reports to NMFS, per 50 CFR part 665.14. These data are needed to determine the condition of fish stocks and whether current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to accidental takes of endangered and threatened species, including seabirds, sea turtles, and marine mammals.

Longline vessel operators are also required to submit pre-trip notifications, including information on trip type, departure time, and transit through a protected species zone per 50 CFR 665.803. Other fisheries are required to submit notifications of trip return, unloading, or sales reports per regulations in multiple Subparts of 50 CFR 665.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: As required in regulations.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 665.

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

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

entering either the title of the collection or the OMB Control Number 0648–0214.

Sheleen Dumas,

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

[FR Doc. 2022–06135 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Nautical Discrepancy and Data Reporting System

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 23, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0007 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Richard Powell, (302) 703–9041, or *Richard.Powell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

NOAA's Office of Coast Survey (Coast Survey) is the nation's nautical chartmaker, maintaining and updating over a thousand charts covering the 3.5 million square nautical miles of coastal waters in the U.S. Exclusive Economic Zone and the Great Lakes. The marine transportation system relies on charting accuracy and precision to keep navigation safe and coastal communities protected from environmental disasters at sea.

Coast Survey also writes and publishes the *United States Coast Pilot*® (Coast Pilot), a series of ten nautical books that supplement nautical charts with essential marine information that cannot be shown graphically on the charts and are not readily available elsewhere. Subjects include, but are not limited to, channel descriptions, anchorages, bridge and cable clearances, tides and tidal currents, prominent features, pilotage, towage, weather, ice conditions, wharf descriptions, dangers, routes, traffic separation schemes, small craft facilities and Federal Regulations applicable to navigation.

The marine environment and shorelines are constantly changing. NOAA makes every effort to update information portrayed in charts and described in the Coast Pilot. Sources of information include, but are not limited to: Pilot associations, shipping companies, towboat operators, state marine authorities, city marine authorities, local port authorities, marine operators, hydrographic research vessels, naval vessels, Coast Guard cutters, merchant vessels, fishing vessels, pleasure boats, U.S. Power Squadron Units, U.S. Coast Guard Auxiliary Units, and the U.S. Army Corps of Engineers (USACE).

The purpose of NOAA's Nautical Discrepancy and Data Reporting System is to offer formal, standardized instruments for recommending changes, corrections, and updates to nautical charts and the Coast Pilot, and to monitor and document the accepted changes. Coast Survey solicits information through the Aimed Stakeholder Interaction and Survey Tool (ASSIST) (*https://www.nauticalcharts.noaa.gov/customer-service/assist/*).

This collection also includes a Citizen Science component, which allows boating groups or individuals to submit reports to update the charts. The Citizen Science component to the collection benefits Coast Survey by allowing the public to ''adopt'' a product or part of a product and provide annual data updates that directly affect that product or products. Data obtained through Citizen Science reports may be used to update certain U.S. nautical charts and the Coast Pilot.

The Nautical Data Branch (NDB) receives numerous potential construction notifications in the form of USACE-issued Public Notices, Permit Applications, and Permits, which could include a proposal or authorization to dredge and/or construct, remove, or abandon structures. NDB vets these Public Notices, Permit Applications, or Permits for the potential of a charting action and registers them into a database. To facilitate the ability of NDB to learn the status of USACE-permitted projects and to obtain as-built and/or survey data associated with the completion of these projects, Coast Survey is proposing to add three Project Status Report Forms to the collection. The solicitation forms, titled *Permit/Public Notice Status Report, Artificial Reef/Mariculture Status Report,* and *Submerged Pipeline Status Report Form,* provide a standardized method for reporting project statuses to the Nautical Data Branch and provide special instructions regarding the submission of digital as-builts and/or survey data. Upon receipt of the forms, NDB may register the forms, along with the USACE Permit and any as-built data, into the Marine Chart Division's (MCD) internal database in support of potential updates to the applicable NOAA nautical chart(s).

These forms provide an effective way for permittees to notify MCD of the status of their permitted projects and help MCD garner pertinent data necessary for chart application. This mode of data delivery facilitates the ability of NDB to capture complete, more efficient, registration-ready source packages that require less frequent correspondence with the permittee prior to source registration. This process is instrumental in accelerating the availability of important, and/or possibly critical, nautical data to the cartographic production branches for charting action.

The title of this collection is also being updated from Nautical Discrepancy Reporting System to Nautical Discrepancy and Data Reporting System.

II. Method of Collection

Respondents can submit discrepancy reports electronically through the ASSIST website or by telephone (888–990–6622).

Status Report Forms: Every month, NDB mails customized versions of the previously mentioned status report forms to a different batch of permittees, requesting information on the completion status of their permitted projects. If a permittee would like to notify the Marine Chart Division (MCD)

of the completion of their project before receiving a customized version of a status report form from NDB, blank status report forms can be acquired from the Coast Survey website, or the forms may be emailed by NDB to the permittee upon request.

After completion, respondents can submit the Status Report Forms, and provide any associated as-built/survey data, to NDB by mail or via email.

III. Data

OMB Control Number: 0648–0007.

Form Number(s): None.

Type of Review: Regular submission [Revision and extension of a currently approved information collection].

Affected Public: Business or other for-profit; state, local, and tribal government; universities; individuals or households; not for-profit institutions, professional and other mariners, etc.

Estimated Number of Respondents: 1,570.

Estimated Time per Response: 10–15 minutes depending on the report.

Estimated Total Annual Burden Hours: 797.

Estimated Total Annual Cost to Public: $388.60.

Respondent's Obligation: Voluntary.

Legal Authority: None.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2022–06158 Filed 3–22–22; 8:45 am]

BILLING CODE 3510–JE–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, April 7, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the CBAC is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The CBAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to attend this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_a2Z8NX1ToPsGCFg,* by noon, April 6, 2022. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, April 6, 2022, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–06082 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB) of the Consumer Financial Protection Bureau (CFPB). The notice also describes the functions of the advisory board.

DATES: The meeting date is Wednesday, April 6, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and

is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the CAB states that: The purpose of the CAB is outlined in section 1014(a) of the Dodd-Frank Act, which states that the CAB shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the Bureau. Its objectives will include identifying the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The CAB will discuss broad policy matters related to the CFPB's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The CFPB will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_ahOgHhS3JnEW16u,* by noon, April 5, 2022. Members of the public must RSVP by the due date.

III. Availability

The CAB's agenda will be made available to the public on Tuesday, April 5, 2022, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the CFPB's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–06081 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Academic Research Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Academic Research Council (ARC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Friday, April 8, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the of the ARC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Academic Research Council under agency authority. Section 3 of the ARC Charter states: ''The committee will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions.'' The duties of the ARC are solely advisory and shall extend only to the submission of advice and recommendations to the Bureau.

II. Agenda

The ARC will discuss broad policy matters related to the Bureau's Research Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1-855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the ARC members for consideration. Individuals who wish to attend this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_8Bvx1ytXp0rASkC,* by noon, April 7, 2022. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Thursday, April 7, 2022 via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the

meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–06078 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, April 7, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the CUAC is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less.''

II. Agenda

The CUAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_a2Z8NX1ToPsGCFg,* by noon, April 6, 2022. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, April 6, 2022, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–06083 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–704–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Morgan Stanley to be effective 4/1/2022.

Filed Date: 3/16/22.

Accession Number: 20220316–5064.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: RP22–705–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Repsol Energy to be effective 4/1/2022.

Filed Date: 3/16/22.

Accession Number: 20220316–5065.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: RP22–706–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Six One Commodities Vega LLC to be effective 4/1/2022.

Filed Date: 3/16/22.

Accession Number: 20220316–5067.

Comment Date: 5 p.m. ET 3/28/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 17, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06141 Filed 3–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–33–000.

Applicants: FirstEnergy Transmission, LLC.

Description: Informational Updated Report of FirstEnergy Transmission, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5259.

Comment Date: 5 p.m. ET 3/28/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–66–000.
Applicants: Sunlight Storage, LLC.
Description: Sunlight Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generation Status.
Filed Date: 3/17/22.
Accession Number: 20220317–5062.
Comment Date: 5 p.m. ET 4/7/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2511–001.
Applicants: NorthWestern Corporation.
Description: Supplement to Triennial Market Power Analysis for the SPP Region to be effective N/A.
Filed Date: 12/14/2021.
Accession Number: 20211214–5001.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER20–2541–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report Entergy Louisiana, LLC II to be effective N/A.
Filed Date: 3/16/22.
Accession Number: 20220316–5189.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER21–666–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report WPPI Energy to be effective N/A.
Filed Date: 3/16/22.
Accession Number: 20220316–5188.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–290–002.
Applicants: Oakland Power Company LLC.
Description: Compliance filing: Amendment to Notice of Implementation of Capital Items to be effective 1/1/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5125.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1103–000.
Applicants: BRP Capital & Trade LLC.
Description: Supplement to February 23, 2022 BRP Capital & Trade LLC submits application for Market-Based Rate Authority.
Filed Date: 3/4/22.
Accession Number: 20220304–5298.
Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1364–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Revised Agreements re SA 324 and SA 342 to be effective 7/1/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5031.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1365–000.
Applicants: MC Project Company LLC.
Description: § 205(d) Rate Filing: Proposed Revisions to Reactive Rate Schedule Request for Limited Tariff Waiver to be effective 6/1/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5044.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1366–000.
Applicants: Martins Creek, LLC.
Description: Tariff Amendment: Notice of Cancellation of Reactive Rate Schedule Request for Limited Waiver to be effective 5/31/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5054.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1367–000.
Applicants: Newark Bay Cogeneration Partnership, L.P.
Description: Tariff Amendment: Notice of Cancellation of Reactive Rate Schedule Request for Limited Waiver to be effective 5/31/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5057.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1368–000.
Applicants: Pedricktown Cogeneration Company LP.
Description: Tariff Amendment: Notice of Cancellation of Reactive Rate Schedule Request for Limited Waiver to be effective 5/31/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5059.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1369–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–17_SA 2777 ATC-Wisconsin Rapids 2nd Rev CFA to be effective 5/17/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5096.
Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER22–1370–000.
Applicants: Sunlight Storage, LLC.
Description: Baseline eTariff Filing: Sunlight Storage, LLC Application for Market-Based Rate Authorization to be effective 5/17/2022.
Filed Date: 3/17/22.
Accession Number: 20220317–5099.
Comment Date: 5 p.m. ET 4/7/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 17, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06140 Filed 3–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–69–000]

Chesapeake Utilities Corporation; Notice of Application and Establishing Intervention Deadline

Take notice that on March 7, 2022, Chesapeake Utilities Corporation (Chesapeake), 909 Silver Lake Boulevard, Dover, Delaware 19904, filed in Docket No. CP22–069–000 an abbreviated application under section 7(f) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, that would allow it to amend its previously granted Initial Service Area to include Worcester County, Maryland. Amending the Initial Service Area will allow Chesapeake to extend its natural gas facilities across the Delaware/Maryland state line from the area around Fenwick Island, Delaware into the area of North Ocean City, Maryland and would allow Chesapeake to enlarge or expand its natural gas distribution facilities in the specified area without further Commission authorization.

Chesapeake operates separate natural gas local distribution companies in both Delaware and Maryland, subject to regulation by the Delaware Public Service Commission and the Maryland Public Service Commission, respectively. Chesapeake's Delaware service area includes portions of all three of the state's counties. In

Maryland, Chesapeake operates in six counties located along the eastern shore of the state. Chesapeake's Initial Service Area was limited in geographic scope to an area within Cecil County, Maryland, which was necessary to encompass the extension of approximately five miles of the Company's natural gas distribution pipeline from Middletown, Delaware (located in the northern half of Delaware in New Castle County) across the state line to the town of Warwick located in Cecil County, Maryland. Chesapeake now seeks an amendment to that Initial Service Area to include Worcester County, Maryland.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this filing may be directed to Brian M. Quinn, Counsel for Chesapeake Utilities, 210 W Pennsylvania Avenue, Suite 500, Towson, Maryland 21204, by phone at (410) 494–6621, or by email at *bmquinn@venable.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on April 7, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before April 7, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–69–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–69–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is April 7, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–69–000 in your submission.

(1) You may file your motion to intervene by using the Commission's

[1] 18 CFR (Code of Federal Regulations) § 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–69–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: 210 W Pennsylvania Avenue Suite 500, Towson, Maryland 21204 or at *bmquinn@venable.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on Tuesday, April 7, 2022.

Dated: March 17, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06150 Filed 3–22–22; 8:45 am]

BILLING CODE 6717–01–P

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0646, FRL–9355–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safe Management of Recalled Airbags Rule, EPA ICR No. 2589.05, OMB Control No. 2050–0221

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR Safe Management of Recalled Airbags Rule (EPA ICR No. 2589.05, OMB Control No. 2050–0221) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0646, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* 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.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Tracy Atagi, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0511; email address: *Atagi.Tracy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public

docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The collection of information is necessary in order to ensure that the hazardous waste airbag modules and airbag inflators exempted under this rule are safely disposed of and that defective airbag modules and airbag inflators are not reinserted into vehicles where they would pose an unreasonable risk of death or serious injury. Information collection activities include maintaining at the airbag handler for no less than three years records of (1) all off-site shipments and (2) confirmations of receipt of airbag waste.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: required to obtain or retain a benefit (sections 2002, 3001, 3002, 3003, 3004, 3006, 3010, and 3017 of the Solid Waste Disposal Act).

Estimated number of respondents: 15,256.

Frequency of response: On occasion.

Total estimated burden: 4,270 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $130,791 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: March 11, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–06107 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0078; FRL–9687–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Landfill Methane Outreach Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Landfill Methane Outreach Program (EPA ICR Number 1849.10, OMB Control Number 2060–0446) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2022. Public comments were previously requested via the **Federal Register** on July 26, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 22, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2003–0078, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2821T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently Under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Lauren Aepli, Climate Change Division, Office of Atmospheric Programs, (6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9423; fax number: (202) 343–2342; email address: *aepli.lauren@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Landfill Methane Outreach Program (LMOP), created by EPA as part of the United States' commitment to reduce greenhouse gas emissions under the United Nations Framework Convention on Climate Change, is a voluntary program designed to encourage and facilitate the development of environmentally and economically sound landfill gas (LFG) energy projects across the United States to reduce methane emissions from landfills. LMOP meets these objectives by educating local governments and communities about the benefits of LFG recovery and use; building partnerships between state agencies, industry, energy service providers, local communities, and other stakeholders interested in developing this valuable resource in their community; and providing tools to evaluate LFG energy potential. LMOP signed voluntary Memoranda of

Understanding (MOUs) with these organizations to enlist their support in promoting cost-effective LFG utilization. The information collection includes completion and submission of the MOU, periodic information updates, and annual completion and submission of basic information on landfill methane projects with which the organizations are involved as an effort to update the LMOP Landfill and Landfill Gas Energy Project Database. The information collection is to be utilized to maintain up-to-date data and information about LMOP Partners and LFG energy projects with which they are involved. The data will also be used by the public to access LFG energy project development opportunities in the United States. In addition, the information collection will assist EPA in evaluating the reduction of methane emissions from landfills. No confidential information is requested or required in this information collection.

Form Numbers: 5900–157, 5900–158, 5900–159, 5900–160, 5900–161, 5900–573, 5900–574, and 5900–575.

Respondents/affected entities: Private companies and municipalities that own or operate landfills; manufacturers and suppliers of equipment/knowledge to capture and utilize LFG; utility companies; end-users of energy from landfills; developers of LFG energy projects; State agencies; service providers of technologies to reduce emissions from operations; and other LFG energy stakeholders.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 1,221 (total).

Frequency of response: Annual.

Total estimated burden: 2,494 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $228,545 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 221 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to anticipated growth in the number of new LMOP Partners annually.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–06109 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0160; FRL–9409–02–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients—February 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 22, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, through the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets*.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov*; or Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov*. The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-*

participation-process-registration-actions).

A. Notice of Receipt—New Active Ingredients

1. *File Symbol:* 100–RTNA, 100–RTNE, 100–RTNG, 100–RTNI, 100–RTNL, 100–RTNO, 100–RTNT, 100–RTNU, 100–RTRE, 100–RTRG, 100–RTRN, 100–RTRR, 100–RTRU. *Docket ID number:* EPA–HQ–OPP–2021–0641. *Applicant:* Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Insecticide—Isocycloseram at 1.0%, 98.0%, 18.3%, 34.8%, 9.35%, 1.71%, 34.8%, 0.71%, 18.3%, 9.27%, 25.7%, 34.8%, 8.26% respectively. *Proposed uses:* Terrestrial field and greenhouse food crop uses: Brassica head and stem vegetables (crop group 5–16); brassica leafy greens (crop subgroup 4–16B); bulb vegetable (crop group 3–07); citrus fruit (crop group 10–10); corn (field, popcorn, seed); cotton (crop subgroup 20C); cucurbit vegetables (crop group 9); fruiting vegetables (crop group 8–10); berry and small fruit crop group (crop group 13–07); tropical and subtropical fruit, edible peel group (crop group 23); tropical and subtropical fruit, inedible peel group (crop group 24); leafy greens (crop subgroup 4–16A); peanut; pome fruit (crop group 11–10); soybean, stone fruit (crop group 12–12); tree nuts (crop group 14–12); and tuberous and corm vegetables (crop subgroup 1C). *Terrestrial and Greenhouse Nonfood Uses:* Turfgrass (golf courses; institutional, commercial, and residential lawns and landscapes; sod farms; sports fields; parks; municipal grounds; cemeteries); ornamentals (ornamental plants, ornamental bulb, corm, and tuber crops; conifers; Christmas trees grown in greenhouses and nurseries; field and container-grown plants grown in outdoor growing structures (shade houses, lath houses and other growing structures); conifer and deciduous tree nurseries; forest nurseries; retail nurseries; outdoor ornamental plants grown in commercial and residential landscapes; parks; and interior plantscapes. *Seed Treatment Uses:* Cereals, small grain (barley, buckwheat, oats, pearl millet, proso millet, rye, teosinte, triticale, wheat); dried shelled pea and bean (except soybean) (crop subgroup 6C); onion, bulb (crop subgroup 3–07A); and rapeseed (crop subgroup 20A). *Commercial and Industrial Uses (Indoor and Outdoor Nonfood):* For use in, on, and around institutional (including schools and daycare facilities), commercial, agricultural (including livestock, poultry, and companion animal housing) and industrial facilities (including warehouses, apartments, supermarkets, restaurants, motels, hotels, hospitals, food-handling/storage/processing establishments, and zoos); and transportation equipment, such as aircraft, trains, ships, boats, and buses. *Domestic Uses (Indoor and Outdoor Nonfood):* For use in and around single and multifamily residential buildings. *Contact:* RD.

2. *File Symbol: 88847–T. Docket ID number:* EPA–HQ–OPP–2021–0782. *Applicant:* Vestaron Corporation 600 Park Offices, Suite 117, Research Triangle, NC 27709. *Product name:* VST–7300 (Basin). *Active ingredient:* Insecticide; U1-AGTX-Ta1b-QA at 8.5%. *Proposed classification/Use:* Insecticide. *Contact:* BPPD.

3. *EPA Registration Number:* 100506–R. *Docket ID number:* EPA–HQ–OPP–2022–0206. *Applicant:* State University of New York (SUNY) College of Environmental Science and Forestry, 1 Forestry Dr., Syracuse, NY 13210. *Product name:* Darling 58 American Chestnut. *Active ingredient:* Oxalate oxidase enzyme and the genetic material necessary for its production at 0.1144%. *Proposed classification/Use:* Plant-Incorporated Protectant. *Contact:* BPPD.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: March 14, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–06163 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0346; FRL–9688–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Labeling Requirements for Certain Minimum Risk Pesticides Under FIFRA Section 25(b) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR), Labeling Requirements for Certain Minimum Risk Pesticides under FIFRA Section 25(b) (EPA ICR Number 2475.04, OMB Control Number 2070–0187) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2022. Public comments were previously requested via the **Federal Register** on September 7, 2021 during a 60-day comment period This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 22, 2022.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–2021–0346, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2821T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently Under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nora Stoner, Mission Support Division, Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (Mailcode: 7101M), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0355; email address: *stoner.nora@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This information collection request documents the Paperwork Reduction Act (PRA) burden for the labeling requirements for certain minimum risk pesticide products exempt from Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registration under 40 CFR 152.25(f). Under 40 CFR 152.25(f), EPA has exempted from the requirement of FIFRA registration certain pesticide products if they are composed of specified ingredients and labeled accordingly. EPA created the exemption for minimum risk pesticides to eliminate the need for industry or business to expend significant resources to apply for and maintain regulated products that are deemed to be of minimum risk to human health and the environment. In addition, exempting such products freed Agency resources to focus on evaluating formulations whose toxicity was less well characterized, or was of higher toxicity.

The labeling requirements are the key component of the minimum risk exemption since this is the only information that enforcement authorities have to assess whether or not the product meets the exemption requirements. While EPA does not review these products, and therefore a Federal label review is not conducted, to maintain exemption status, an exempt product's label must meet certain criteria.

Form Numbers: None.

Respondents/affected entities: Individuals or entities engaged in activities related to the minimum risk pesticide products covered by the exemption, including manufacturers, distributers, retailers, and users of the subject minimum risk pesticides.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 7 (total).

Frequency of response: One time.

Total estimated burden: 478.5 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $61,018.45 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–06110 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0767; FRL–9356–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices; EPA ICR No. 1381.13, OMB Control No. 2050–0122

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices; ''(EPA ICR No. 1381.13, OMB Control No. 2050–0122) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0767, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* 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.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mail Code 3204A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–0537; email address: *Dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and

clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available. The operating record must be supplied to the State as requested until the end of the post-closure care period of the MSWLF. The information collected will be used by the State Director to confirm owner or operator compliance with the regulations under 40 CFR part 258.

Form Numbers: None.

Respondents/affected entities: Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices.

Respondent's obligation to respond: The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available.

Estimated number of respondents: 3,800.

Frequency of response: On occasion.

Total estimated burden: 204,868 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,211,000 (per year), includes $1,831,000 annualized capital or operation & maintenance costs capital or operation & maintenance costs.

Changes in Estimates: There is increase of 60 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the increased number of states adopting the RD&D section (258.4) since the last ICR update.

Dated: March 11, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–06108 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0104; FRL 9661–01–OLEM]

Proposed Information Collection Request; Comment Request; Brownfields Program—Accomplishment Reporting (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Brownfields Program—Accomplishment Reporting (Renewal)'' (EPA ICR No. 2104.09, OMB Control No. 2050–0192 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension and update of the ICR, which is currently approved through December 31, 2024. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0104 online using *www.regulations.gov* (our preferred method), by email to *docket.superfund@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kelly Gorini, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1702; fax number: (202) 566–1476; email address: *gorini.kelly@epa.gov*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR covers the collection of information from those organizations that receive cooperative agreements, contracts, and Targeted Brownfields Assessment (TBA) funds from EPA under the authority of the section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Brownfields Utilization, Investment, and Local Development (BUILD) Act (Pub. L. 115–141). CERCLA 104(k), as amended, authorizes EPA to award grants or cooperative agreements and contract funding to states, tribes, local governments, other eligible entities, and nonprofit organizations to support the assessment and cleanup of brownfields

sites. Under section 101(39) of CERCLA, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cooperative agreement recipients (''recipients'') have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 2 CFR part 1500 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with funded brownfields activities. EPA intends to expand programmatic reporting requirements to include TBA contractors and technical assistance contractors. EPA will use several forms to assist recipients and contractors in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Land Revitalization Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

Form Numbers: EPA ICR No. 2104.09, OMB Control No. 2050–0192.

Respondents/affected entities: State/local/tribal governments; Non-Profits; Contractors.

Respondent's obligation to respond: Required to obtain or Retain Benefits (2 CFR part 1500).

Estimated number of respondents: 5,714 (total).

Frequency of response: Bi-annual for subtitle CERCLA 128 recipients; quarterly for CERCLA 104(k) recipients.

Total estimated burden: 6,206 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $721,025 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The burden hours estimate increased from 6,143 hours in the 2020 ICR request to 6,206 hours currently, for an increase of 63 hours. This slight change can be attributed to eliminating the Area-Wide Planning Form but adding two additional forms to track technical assistance. Additionally, the number of respondents increased from 5,517 in 2020 to an estimated 5,714, an increase of 197. Respondents indicated that improvements in the ACRES reporting system and increased familiarity with the program lead to a lower burden per individual entry.

Dated: March 15, 2022.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2022–06096 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0391, FRL–9357–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Facility Ground-Water Monitoring Requirements, EPA ICR No. 0959.17, OMB Control No. 2050–0033

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Facility Ground-Water Monitoring Requirements (Renewal) (EPA ICR No. 0959.17, OMB Control No. 2050–0033) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0391, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* 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.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; fax number: email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as ''interim status.'' Owners and operators of interim status facilities also must comply with standards set under Section 3004.

This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 265, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or operators that conduct ground-water monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit; and State, Local, or Tribal Governments.

Respondent's obligation to respond: Mandatory (RCRA Sections 3004 and 3005).

Estimated number of respondents: 813.

Frequency of response: Quarterly, semi-annually, and annually.

Total estimated burden: 104,861 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $20,491,681 (per year), includes $16,090,478 annualized capital or operation & maintenance costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: March 11, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–06106 Filed 3–22–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 7, 2022.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *The George N. Schulte Trust, George N. Schulte, as trustee, both of Dixon, Missouri; David R. Tritten and Elizabeth A. Tritten, both of Waynesville, Missouri; Beth A. Wright and Richard R. Wright, both of Iberia, Missouri;* to retain voting shares of Milco Bancorporation, Inc., and thereby indirectly retain voting shares of Bank of Iberia, both of Iberia, Missouri.

Board of Governors of the Federal Reserve System, March 18, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–06152 Filed 3–22–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 152 3021/Docket No. 9397]

Health Research Laboratories, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 22, 2022.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Health Research Laboratories, LLC; Docket No. 9397'' on your comment, and file your comment

online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elizabeth Averill (202–326–2993), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 22, 2022. Write ''Health Research Laboratories, LLC; Docket No. 9397'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Health Research Laboratories, LLC; Docket No. 9397'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this document and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 22, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Health Research Laboratories, LLC; Whole Body Supplements, LLC; and their Managing Member and officer, Kramer Duhon (''Respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves the Respondents' advertising for Black Garlic Botanicals, BG18, The Ultimate Heart Formula, and Neupathic. The complaint alleges Respondents violated Sections 5(a) and 12 of the FTC Act by disseminating false and unsubstantiated advertisements claiming that: (1) Black Garlic Botanicals, BG18, and The Ultimate Heart Formula will prevent, reduce the risk of, cure, mitigate, or treat cardiovascular disease, atherosclerosis, and/or hypertension; and (2) Neupathic will cure, treat, or mitigate diabetic neuropathy. Respondents Kramer Duhon and Health Research Laboratories are also parties to a previous federal court order in *FTC and State of Maine* v. *Health Research Laboratories, LLC, et al.,* 2:17–cv–00467–JDL (D. Me. Jan. 16, 2018).

The proposed consent order includes injunctive relief that addresses these alleged violations and contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future.

Part I would ban Respondents from advertising, marketing, promoting, or offering for sale any dietary supplements. Part II would ban Respondents from making any disease prevention, reduction of risk, cure, mitigation, or treatment claim when advertising, marketing, promoting, or offering for sale any product.

Part III prohibits Respondents from making any representation about the health benefits, safety, performance, or efficacy of any food or drug, unless the representation is non-misleading, and at the time such representation is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of

this provision, ''competent and reliable scientific evidence'' means tests, analyses, research, or studies that: (1) Have been conducted and evaluated in an objective manner by experts in the relevant condition or function to which the representation relates; (2) are generally accepted by such experts to yield accurate and reliable results; and (3) are randomized, double-blind, and placebo-controlled human clinical testing of the product or of an essentially equivalent product, when experts would generally require such human clinical testing to substantiate that the representation is true. In addition, this provision requires that when such tests or studies are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts as relevant to an assessment of such testing must be available for inspection and production to the Commission.

Part IV prohibits Respondents from making misrepresentations: (1) That the performance or benefits of any food or drug are scientifically or clinically proven or otherwise established; or (2) about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or other research.

Part V requires Respondents to preserve supporting data and documents relevant to assessing human clinical tests that they rely on to support claims within the scope of Part III of the proposed order. Part VI requires Respondents to send notices to consumers who purchased Black Garlic Botanicals, BG18, The Ultimate Heart Formula, or Neupathic informing them about this matter and the Commission's order. Part VII prohibits Respondents and their officers, agents, and employees from disclosing, using, or receiving any benefit from customer information that Respondents obtained in connection with sales of Black Garlic Botanicals, BG18, The Ultimate Heart Formula, or Neupathic. Part VIII requires Respondents to cancel any subscription plan with a negative option feature related to Black Garlic Botanicals, BG18, The Ultimate Heart Formula, or Neupathic.

Parts IX through XII of the proposed order relate to compliance reporting and monitoring. Part IX is an order acknowledgment and distribution provision requiring Respondents to acknowledge the order, to provide the order to current and future owners, managers, business partners, certain employees, and to obtain an acknowledgement from each such person that they received a copy of the order. Part X requires Respondents to submit a compliance report one year after the order is entered, and to promptly notify the Commission of corporate changes that may affect compliance obligations. Part XI requires Respondents to maintain, and upon request make available, certain compliance-related records. Part XII requires Respondents to provide additional information or compliance reports, as requested.

Part XIII states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–06079 Filed 3–22–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0335]

Advisory Committee; Obstetrics, Reproductive and Urologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Obstetrics, Reproductive and Urologic Drugs Advisory Committee (formerly known as the Bone, Reproductive and Urologic Drugs Advisory Committee) by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Obstetrics, Reproductive and Urologic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the March 23, 2024, expiration date.

DATES: Authority for the Obstetrics, Reproductive and Urologic Drugs Advisory Committee (formerly known as the Bone, Reproductive and Urologic Drugs Advisory Committee) will expire on March 23, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Joyce Frimpong, Division of Advisory Committee and Consultant Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *ORUDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services, FDA is announcing the renewal of the Obstetrics, Reproductive and Urologic Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug products for use in the practice of obstetrics, gynecology, urology and related specialties, and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of 11 voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of obstetrics, gynecology, urology, pediatrics, epidemiology, or statistics and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/obstetrics-reproductive-and-urologic-drugs-advisory-committee* or by

contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). Due to a change in the Committee name and description of duties, a final rule will be published in the **Federal Register** amending 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: March 16, 2022.

Andi Lipstein Fristedt,

Deputy Commissioner for Policy, Legislation, and International Affairs, U.S. Food and Drug Administration.

[FR Doc. 2022–05973 Filed 3–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) has scheduled a public meeting. Information about NACRHHS and the agenda for this meeting can be found on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

DATES:

- Monday, April 11, 2022, 12:00 p.m.–5:00 p.m. Eastern Time (ET);
- Tuesday, April 12, 2022, 12:00 p.m.–4:00 p.m. ET; and
- Wednesday, April 13, 2022, 12:00 p.m.–5:00 p.m. ET.

ADDRESSES: This meeting will be held virtually via Zoom webinar. While this meeting is open to the public, advance registration is required.

Please register online at *https://us02web.zoom.us/meeting/register/tZIud-yqqDojHNMeqq9vMuklHBHhNftNoLAM* by the deadline of 12:00 p.m. ET on April 8, 2022. Instructions on how to access the meeting via Zoom will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Steven Hirsch, Administrative Coordinator at the Federal Office of Rural Health Policy, HRSA, 5600 Fishers Lane, 17W59D, Rockville, Maryland 20857; 301–443–7322; or *shirsch@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice and recommendations to the Secretary of Health and Human Service on policy, program development, and other matters of significance concerning both rural health and rural human services.

During the April 11–13, 2022, meeting, NACRHHS will discuss two topics: Access to Emergency Medical Services in Rural America and Rural Human Services Programs and Issues. Agenda items are subject to change as priorities dictate. Refer to the NACRHHS website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants wishing to provide oral comments must submit a written version of their statement at least 3 business days in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time permits. Public participants wishing to offer a written statement should send it to Steven Hirsch, using the contact information above, at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Steven Hirsch at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–06084 Filed 3–22–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting website (*http://videocast.nih.gov*).

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 2–3, 2022.

Time: May 2, 2022, 10:00 a.m. to 3:00 p.m.

Agenda: NICHD Director's report; NCMRR Director's report; Research talk on Peripheral Nerve Regeneration; Concept Clearance; Mini Symposium on Assessments for Rehabilitation (neurophysiologic and clinical measures).

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2116, Bethesda, MD 20892–7510 (Virtual Meeting).

Time: May 3, 2022, 10:00 a.m. to 3:00 p.m.

Agenda: Progress on the NIH Rehabilitation Research Plan; NIH Data Sharing Plan; NIH Updates on Equity, Diversity, and Inclusion; Effect of COVID–19 on People with Disabilities; Review of NCMRR Infrastructure Support; Comments from Parting Board Members; Agenda Planning for Next Board Meeting in December 2022.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2116, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Ralph M. Nitkin, Ph.D., Deputy, National Center for Medical Rehabilitation Research and Director, Biological Sciences and Career Development Program, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2116, Bethesda, MD 20892–7510, (301) 402–4206 *nitkinr@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/advisory/nabmrr,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 17, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–06074 Filed 3–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–05; OMB Control No. 2502–0483]

60-Day Notice of Proposed Information Collection: Debt Resolution Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 23, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. This information collection request is a revision of an approved collection. The revision consists of updates to the Public Reporting Burden and Privacy Act Statement language on all forms, minor formatting changes on all forms, minimal wording changes for clarification on the HUD–56141, and a decrease in the reported burden hours due to a reduction in the number of respondents and overall claims in HUD's inventory.

A. Overview of Information Collection

Title of Information Collection: Debt Resolution Program.

OMB Approval Number: 2502–0483.

OMB Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–56141, HUD–56142, HUD–56146.

Description of the need for the information and proposed use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s).

Respondents: Individuals or Households, Business or other For-Profit.

Estimated Number of Respondents: 648.

Estimated Number of Responses: 2,159.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 590 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing Federal Housing Administration.

[FR Doc. 2022–06146 Filed 3–22–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22EE000101000; OMB Control Number 1028–0115/Renewal]

Agency Information Collection Activities; Request for Comments

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference Office of Management and Budget (OMB) Control Number 1028–0115 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Eldrich Frazier, Federal Geographic Data Committee (FGDC) Office of the Secretariat, by email at *fgdc@fgdc.gov,* or by telephone at 703–648–5733.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public

comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The Doug D. Nebert National Spatial Data Infrastructure (NSDI) Champion of the Year Award honors a respected colleague, technical visionary, and recognized national leader in the establishment of spatial data infrastructures that significantly enhance the understanding of our physical and cultural world. The award is sponsored by the FGDC and its purpose is to recognize an individual or a team representing Federal, State, Tribal, regional, and (or) local government, academia, or non-profit or professional organization that has developed an outstanding, innovative, and operational tool, application, or service capability used by multiple organizations that furthers the vision of the NSDI. National nominations are accepted from public- and private-sector individuals, teams, organizations, and professional societies. Nomination packages comprise three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the development of an outstanding, innovative, and operational tool, application, or service capability that directly supports the spatial data infrastructures. Nominations may include up to 10 pages of supplemental information such as resume, publications list, and/or letters of endorsement. The award consists of a citation and plaque, which are presented to the recipient at an appropriate public forum by the FGDC Chair. The name of the recipient is also inscribed on a permanent plaque, which is displayed by the FGDC.

Title of Collection: Doug D. Nebert NSDI Champion of the Year Award.

OMB Control Number: 1028–0115.

Form Number: None.

Type of Review: Renewal of a previously approved collection.

Respondents/Affected Public: Personnel from Federal, State, Local, and Tribal governments; Private Sector; Academia; and Non-profit organizations.

Total Estimated Number of Annual Respondents: 10.

Total Estimated Number of Annual Responses: 10.

Estimated Completion Time per Response: 10 Hours.

Total Estimated Number of Annual Burden Hours: 100 Hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annual.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee, Core Science Systems Mission Area, U.S. Geological Survey.

[FR Doc. 2022–06136 Filed 3–22–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Receipt of Documented Petition for Federal Acknowledgment as an American Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) gives notice that the group known as the Schaghticoke Indian Tribe has filed a documented petition for Federal acknowledgment as an American Indian Tribe with the Assistant Secretary—Indian Affairs. The Department seeks comment and evidence from the public on the petition.

DATES: Comments and evidence must be postmarked by July 5, 2022.

ADDRESSES: Copies of the narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under 25 CFR 83.21(b)), and other information are available at the Office of Federal Acknowledgment's (OFA) website: *www.bia.gov/AS-IA/OFA.* Submit any comments or evidence to: Mr. R. Lee Fleming, Director, Office of Federal Acknowledgment, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240, or by email to: *lee.fleming@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. R. Lee Fleming, OFA Director, Office of the Assistant Secretary—Indian Affairs, by phone: (202) 513–7650; or by email: *lee.fleming@bia.gov.*

SUPPLEMENTARY INFORMATION: Under 25 CFR part 83, the Department gives notice that the group known as the Schaghticoke Indian Tribe has filed a documented petition for Federal acknowledgment as an American Indian Tribe with the Assistant Secretary—Indian Affairs. The Department's revisions to 25 CFR part 83 became final and effective on July 31, 2015 (80 FR 37861). Improving transparency through increased notice of petitions and providing improved public access to petitions were keys goal of the 2015 revisions. Today the Department informs the public that a complete documented petition has been submitted under the current regulations, that portions of that petition are publicly available on the website identified above for easy access, and that we are seeking public comment early in the process on this petition.

Under 25 CFR 83.22(b)(1), OFA publishes notice that the following group has filed a documented petition for Federal acknowledgment as an American Indian Tribe to the Assistant Secretary—Indian Affairs: Schaghticoke Indian Tribe c/o Mr. Alan Russell, P.O. Box 111, Kent, Connecticut, 06757.

Also under 25 CFR 83.22(b)(1), OFA publishes on its website the following:

i. The narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under 25 CFR 83.21(b));

ii. The name, location, and mailing address of the petitioner and other information to identify the entity;

iii. The date of receipt;

iv. The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment within 120 days of the date of the website posting; and

v. The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.

Authority: The Department publishes this notice and request for comment in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–06069 Filed 3–18–22; 11:15 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900]

Indian Business Incubators Program (IBIP) Grants Under the Native American Business Incubator Act of 2020

AGENCY: Office of the Assistant Secretary, Indian Affairs, Interior.

ACTION: Notice of solicitation for proposals.

SUMMARY: The Secretary of the Interior (Secretary), through the Office of Indian Economic Development (OIED), Division of Economic Development (DED), solicits proposals from eligible applicants (see Section IV. Eligibility for Funding, of this notice) to receive competitive grants to establish and operate business incubators that serve Tribal reservation communities. These grants will provide individually tailored business incubation and other business services to Native businesses and Native entrepreneurs to overcome the unique obstacles they confront and provide tools necessary to start and grow businesses that offer products and services to reservation communities.

DATES: Grant application packages must be submitted to *Grants.gov* no later than 5 p.m. Eastern Daylight Time, on Monday May 23, 2022. OIED will not consider proposals received after this time and date.

ADDRESSES: The required method of submitting proposals is through *Grants.gov.* For information on how to apply for grants in *Grants.gov*, see the instructions at *https://www.grants.gov/help/html/help/Applicants/HowToApplyForGrants.htm.* Proposals must be submitted to *Grants.gov* by the deadline established in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Wilson, Grant Management Specialist, OIED, telephone: (505) 917–3235; email: *dennis.wilson@bia.gov.* If you have questions regarding the application process, please contact Ms. Jo Ann Metcalfe, Grant Officer, telephone (703) 390–6410; email *jo.metcalfe@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Additional Program information can be found at *https://www.bia.gov/service/grants/ibip.*

SUPPLEMENTARY INFORMATION:

I. General Information
II. Number of Projects Funded
III. Background
IV. Eligibility for Funding
V. Requirements for an IBIP Proposal
VI. Required Non-Federal Contributions
VII. Applicant Procurement Procedures
VIII. Limitations
IX. IBIP Application Guidance
X. Mandatory Components
XI. Incomplete Applications
XII. Review and Selection Process
XIII. Evaluation Criteria
XIV. Transfer of Funds
XV. Reporting Requirements for Award Recipients
XVI. Conflicts of Interest
XVII. Questions and Requests for OIED Assistance
XVIII. Paperwork Reduction Act
XVIII. Authority

I. General Information

Award Ceiling: $300,000 annually.

Award Floor: $100,000 annually.

CFDA Number: 15.032.

Cost Sharing or Matching Requirement: Yes.

Number of Awards: 10 to 15.

Category: Business Incubator Services.

Length of Project Periods:

Length of Project Period: 36 month project period with three 12-month budget periods, with an option for an additional three 12-month budget periods.

II. Number of Projects Funded

OIED anticipates award of approximately 10 to 15 grants under this announcement ranging in value from approximately $100,000 annually to $300,000 annually. IBIP awards will be for a three-year period of performance. OIED will use a competitive evaluation process based on criteria described in the Review and Selection Process section (see Section XII. Review and Selection Process, of this notice).

III. Background

On October 20, 2020, Congress enacted the Native American Business Incubators Program Act, Public Law 116–174, codified at 25 U.S.C. 5801 *et seq*. In the Act, Congress established the Native American Business Incubators Program and required the Secretary of the Interior to promulgate regulations to implement the program. *See* 25 U.S.C. 5804.

The Office of the Assistant Secretary—Indian Affairs, through OIED, is soliciting proposals from eligible entities (as outlined in section IV of this notice) for grant funding to establish Indian Business Incubators that serve entrepreneurs with start-up and early-stage businesses who will provide products or services to Tribal reservation communities. The Indian Business Incubator will deliver a range of business services such as: Mentorships, networking, technical assistance, and access to investors. Further, Indian Business Incubators will promote collaboration, address challenges, and provide individually tailored services to overcome the obstacles that are unique to each participating business.

The OIED, previously referred to as the Office of Indian Energy and Economic Development (IEED), administers this grant program through the DED funded under a non-recurring appropriation budget. Congress appropriates funds on a year-to-year basis. Thus, while IBIP projects may extend over several years, funding for successive years beyond the original period of performance depends on each fiscal year's appropriations.

The projects awarded are expected to be for a project period of 36 months, with an option of an additional 36 months. The initial grant award will be for a 12-month budget period. The award continuation beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each recipient, and a determination that continued funding would be in the best interest of the Federal government. Neither the Department of the Interior (DOI) nor Indian Affairs will be held responsible for proposal or application preparation costs. Publication of this solicitation does not obligate DOI or Indian Affairs to award any specific grant or to obligate all or any part of available funds.

IV. Eligibility for Funding

The Secretary, through the OIED, will solicit proposals for an IBIP grant from eligible entities that are able to provide the physical workspace, equipment, and connectivity necessary for Native businesses and Native entrepreneurs to collaborate and conduct business on a

local, regional, national, and international level:

- The following are eligible entities (2 CFR 1187.3):
  - An Indian Tribe;
    - Federally recognized Tribes listed as *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs* at 87 FR 4636 (January 28, 2022) or Tribal Organizations. Indian Tribes are referred to using the term ''Tribe'' throughout this notice. Tribal Organization is defined by 25 U.S.C. 5304(*l*). While federally recognized Tribes or Tribal Organizations may apply for IBIP grants, grantees may select or retain for-profit or non-profit Tribal Organizations to perform a grant's scope of work to receive IBIP grants.
  - Tribal College or University that will have been operational for not less than one year before receiving a grant under the IBIP;
    - Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and implementing regulations at 25 CFR part 41, or the Navajo Community College Act (25 U.S.C. 640a note); or
    - Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).
  - An Institution of Higher Education that will have been operational for not less than one year before receiving a grant under the IBIP:
    - Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of 20 U.S.C. 1091(d);
    - Is legally authorized within such State to provide a program of education beyond secondary education;
    - Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;
    - Is a public or other nonprofit institution; and
    - Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
  - A Tribe or private nonprofit organization that provides business and financial technical assistance and;
    - Is a ''Tribal Organization'' as defined by 25 U.S.C. 5304(*l*)
    - Will have been operational for not less than one year before receiving a grant under the IBIP; and
    - Commits to serving one or more reservation communities.
  - Two or more eligible entities may submit a Joint Application, but:
    - All joint entities must submit certifications they are eligible as they combine resources and expertise at a physical location dedicated to assisting Native businesses and Native entrepreneurs under the IBIP, demonstrating that together they meet the requirements of 2 CFR 1187.13; and
    - The application must indicate which eligible entity will be the lead contact for the purposes of grant management.

V. Requirements for an IBIP Proposal

Applicants must provide a certification that they are eligible to receive an IBIP grant, as well as designate an executive director or program manager to manage the business incubator. Applicants must submit the necessary documents per Section X. Mandatory Components, of this notice.

VI. Required Non-Federal Contributions

Applicants must include a description of the non-Federal contributions, in an amount equal to not less than 25 percent of the grant amount requested, or submit a waiver request. OIED may waive the requirement for the non-Federal contribution, in whole or in part, for one or more years of the initial IBIP grant award if OIED determines that the waiver is appropriate based on:

- The awardee's ability to provide non-Federal contributions;
- The quality of business incubation services; and
- The likelihood that one or more reservation communities served by the awardee will not receive similar services elsewhere because of the remoteness or other reasons that inhibit the provision of business and entrepreneurial development services.

In a non-competitive renewal, the Awardee must provide non-Federal contributions in an amount not less than 33 percent of the total amount of the grant. Failure to provide the non-Federal contribution will result in noncompliance and OIED withholding of funds, unless OIED waives the requirement under 25 CFR 1187.43.

Matching and cost-sharing requirements are discussed in 2 CFR 200.306. The primary recipient is responsible for the full amount of the non-Federal match proposed, including any amount provided by one or more third parties as listed on the Standard Form 424, Application for Federal Assistance. Whereas the full match contribution does not need to be in hand as of the date of the application, the application must provide commitments for the non-Federal contribution through the term of the grant. Applicants may meet the required non-Federal cost share or match through in-kind contributions, which must be necessary and reasonable for accomplishing the proposed project objective(s). The applicant must describe and attribute fair and equitable market value (2 CFR 200.306) to any in-kind match proposed in lieu of cash, which may include, but is not limited to:

- Not paid from, or sourced, from other Federal funds, programs or grants;
- Documented in project records and not be used as match in another grant;
- An allowable cost under 2 CFR 200 Subpart E—Cost Principles;
- Must occur within the period of performance of the award;
- Value of services and property donated as per 2 CFR 200.306, for instance;
  - Space as measured by the value of rent;
  - Materials and Equipment;
  - Donated Services and Technical Assistance;
    - Payroll or volunteer services from personnel working on the incubator who are not funded by IBIP, which must be well documented and supported per methods used for regular personnel costs;
- Contribution from a third party(ies) per 2 CFR 200.434. A third party is any individual or organization other than the eligible applicant, such as a partner, that is not receiving grant funds;
- Projected earnings through the term of the grant;

VII. Applicant Procurement Procedures

The applicant is subject to the procurement standards in 2 CFR 200.318 through 200.326. In accordance with 2 CFR 200.318, an applicant must use its own documented procurement procedures which reflect Tribal laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in title 2 of the Code of Federal Regulations.

VIII. Limitations

IBIP grant funding must be expended in accordance with applicable statutory and regulatory requirements, including 2 CFR part 200. As part of the grant application review process, OIED may conduct a review of an applicant's prior OIED grant awards(s).

Applicants that are currently under BIA sanction Level 2 or higher resulting from non-compliance with the Single Audit Act are ineligible for a IBIP award. Applicants at Sanction Level 1 will be considered for funding.

IBIP award funds may be used to provide physical workspace and facilities for Native businesses and Native entrepreneurs participating in the business incubator. Funds can be used to establish partnerships with other institutions and entities to provide comprehensive business incubation services to Native businesses and Native entrepreneurs participating in the business incubator, as well as for any other uses typically associated with business incubators that OIED determines to be appropriate and consistent with the purposes of the IBIP.

IBIP awards may not be used for:

- Indirect costs or administrative costs as defined by the Federal Acquisition Regulation (FAR);
- Supplemental employment, including fringe benefits, for current positions not significantly and directly involved in the proposed project;
- International travel;
- Outside Fees, Legal or Contract Negotiation fees, and application fees associated with permitting that are outside the scope of the grant award;
- Entertainment costs
  - For remote training/conferences locations (where eating establishments are not within a reasonable distance), food costs are allowable, but should not exceed the GSA meals and incidental costs per attendee for that location, not to exceed $5,000 for one event, and not more than twice in a calendar year;
  - Refreshments for non-remote training/conference locations are allowable for $5/attendee/day, not to exceed $1,000 per event,
  - All other food costs are disallowed;
  - However, travel stipends for training participants are allowed, including costs for meals which must follow the GSA Per Diem rates.
- Any other activities not authorized by the grant award letter.

IX. IBIP Application Guidance

All applications are required to be submitted in digital form to *grants.gov.* For instructions, see *https://www.grants.gov/help/html/help/Applicants/HowToApplyForGrants.htm.*

X. Mandatory Components

The mandatory components, and forms identified below, must be included in each proposal package. Links to the mandatory forms can be found under the ''package'' tab on the IBIPFY2022 grant opportunity page at *www.grants.gov.* Any information in the possession of the BIA or submitted to the BIA throughout the process, including final work product, constitutes government records and may be subject to disclosure to third parties under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of the Interior's FOIA regulations at 43 CFR part 2, unless a FOIA exemption or exception other provisions of law protect the information. The following are the names of the required forms:

Cover Page
Application for Federal Assistance (SF–424) [V3.0]
Cover Letter
Project Abstract Summary [V2.0]
Project Narrative Attachment Form [V1.2]
Budget Information for Non-Construction Programs (SF–424A) [V1.0]
Attachments [V1.2]
Key Contacts [V2.0]

Cover Page: A Cover Page must be included in the application and contain the following:

- Category of Funding for the IBIP application.
- Proposal Title.
- Total Amount of funding requested from the Program, including matching amounts.
- Full and Proper Name of the applicant organization.
- Statement confirming the proposed work will have the potential to reach the intended goals and objectives.
- Confirm current registration in SAM, attaching print-out from *sam.gov* to the cover page. See instructions and registration instructions in Appendix.
- Provide current ASAP Recipient ID with BIA. Allow 3–4 weeks to complete all steps of enrollment prior to submission deadline. The organization must be enrolled in ASAP with BIA, current enrollment with other federal agencies is not sufficient. See instructions and registration instructions in Appendix.
- Confirmation of other completed Mandatory Components identified in this section (SF–424, Project Abstract Summary, etc).
- Identification if partnerships such as Tribes, other Tribal Organizations or Entities. This is partnerships outside of a Joint Application.

Application for Federal Assistance SF–424: Applicants are required to complete the Application for Federal Assistance SF–424. Please use a descriptive file name that includes Tribal name and project description, for example IBIPSF424.Tribalname.Project. The SF–424 form requires the Congressional District number of the applicant, which can be found at *https://www.house.gov/reprentatives/find-your-representative.*

Cover Letter: A cover letter not to exceed one (1) page that summarizes the interest and intent, complete with authorized signature(s) of organization leadership. Tribal Resolutions are not necessary but will be accepted as support for the organization.

Project Abstract Summary and Project Narrative Attachment: The first paragraph of the Project Abstract Summary and Project Narrative must include the title and basic description of the proposed business incubator location and services provided. The Project Narrative must not exceed 50 pages. Supplemental information such as letters of support, graphs, charts, maps, photographs and other graphic and/or other relevant information may be included in an appendix and not counted against the 50-page Project Narrative limit. At a minimum, the Project Narrative must include:

- A certification that the applicant(s):
  - Is an eligible applicant; and
  - Has or will designate an executive director or program manager to manage the business incubator;
  - Agrees to:
    - A site evaluation by the Secretary as part of the final selection process;
    - An annual programmatic and financial examination for the duration of the grant; and
    - To the maximum extent practicable, to remedy any problems identified pursuant to the site evaluation and examination.
- A description of the one or more reservation communities to be served by the business incubator;
- A three-year plan that describes:
  - One-year milestone goals and objectives that coordinates with the identified budget periods.
  - The number of Native businesses and Native entrepreneurs to be participating in the business incubator, with goal setting of anticipated number of Native businesses starting, and the anticipated number of Native businesses to help maintain.
  - Whether the business incubator will focus on a particular type of business or industry.
  - A detailed breakdown of the services to be offered to Native

businesses and Native entrepreneurs participating in the business incubator; and

○ A detailed breakdown of the services, if any, to be offered to Native businesses and Native entrepreneurs not participating in the business incubator.

• Information demonstrating the effectiveness and experience of the eligible applicant in:

○ Conducting financial, management, and marketing assistance programs designed to educate or improve the business skills of current or prospective businesses;

○ Working in and providing services to Native American communities;

○ Providing assistance to entities conducting business in reservation communities;

○ Providing technical assistance under Federal business and entrepreneurial development programs for which Native businesses and Native entrepreneurs are eligible; and

○ Managing finances and staff effectively.

• A description of the applicant's non-Federal contributions, in an amount equal to not less than 25 percent of the grant amount requested; and

• A site description of the location at which the eligible applicant will provide physical workspace, including a description of the technologies, equipment, and other resources that will be available to Native businesses and Native entrepreneurs participating in the business incubator, if the applicant is in possession of the site, or a written site proposal containing the information in 2 CFR 1187.12, if the applicant is not yet in possession of the site.

• If the applicant is not yet in possession of the site, the applicant must submit a written site proposal with their application that contains:

○ Sufficient detail for the Secretary to ensure, in the absence of a site visit or video submission, that the proposed site will permit the eligible applicant to meet the requirements of the IBIP; and

○ A timeline describing when the eligible applicant will be:

▪ In possession of the proposed site; and

▪ Operating the business incubator at the proposed site.

Applicants must provide milestones and projected outcomes of their project(s) to demonstrate a successful outcome of the grant. The proposal should address grant awardee requirements:

• Awardee must:

○ Offer culturally tailored incubation services to Native businesses and Native entrepreneurs;

○ Use a competitive process for selecting Native businesses and Native entrepreneurs to participate in the business incubator; however, awardees may still offer technical assistance and advice to Native businesses and Native entrepreneurs on a walk-in basis;

○ Provide physical workspace that permits Native businesses and Native entrepreneurs to conduct business and collaborate with other Native businesses and Native entrepreneurs;

○ Provide entrepreneurship and business skills training and education to Native businesses and Native entrepreneurs including:

▪ Financial education, including training and counseling in:

• Applying for and securing business credit and investment capital;

• Preparing and presenting financial statements; and

• Managing cash flow and other financial operations of a business;

▪ Management education, including training and counseling in planning, organization, staffing, directing, and controlling each major activity or function of a business or startup; and

▪ Marketing education, including training and counseling in:

• Identifying and segmenting domestic and international market opportunities;

• Preparing and executing marketing plans;

• Locating contract opportunities;

• Negotiating contracts; and

• Using varying public relations and advertising techniques.

○ Provide direct mentorship or assistance finding mentors in the industry in which the Native business or Native entrepreneur operates or intends to operate; and

○ Provide access to networks of potential investors, professionals in the same or similar fields, and other business owners with similar businesses.

• Each awardee must leverage technology to the maximum extent practicable to provide Native businesses and Native entrepreneurs with access to the connectivity tools needed to compete and thrive in 21st-century markets.

Additional items to consider:

• A description of the project objectives and goals for each of the 3 years;

• Deliverable products that the grant is expected to generate, including interim deliverables (such as status reports and technical data to be obtained) and final deliverables; and

• Resumes of key consultants and personnel to be retained, if available, and the names of subcontractors, if applicable. This information may be included as an attachment to the application and will not be counted towards the 50-page limitation.

• Please use a descriptive file name that includes Tribal name and project description. For example: IBIPNarrative.Tribalname.Project.

In addition, unless prohibited by Tribal procurement procedures, please include a description of any consultant(s) and partnership(s) the applicant wishes to retain, including their contact information, technical expertise, training, qualifications, and suitability. These documents may be included at the end of the Project Narrative and will not be counted toward the 50-page limitation.

Project Narratives are not judged based on their length. Please do not submit any unnecessary attachments or documents beyond what is listed above, *e.g.,* Tribal history, unrelated photos and maps.

Budget Information for Non-Construction Programs (SF–424A) [V1.0], Line Item Budget and Budget Narrative: All applicants are required to submit a project budget and budget justification with their application. The project budget is for the initial budget period only (typically the first 12 months of the project) and entered on the Budget Information Standard Form, either SF424A or SF–424C. Applicants are encouraged to review the form instructions in addition to the guidance in this section. The budget justification consists of a budget narrative and a line-item budget detail for the first budget period of the proposed project that includes detailed calculations for ''object class categories'' identified on the Budget Information Standard Form and discuss the necessity, reasonableness, and allocation of the proposed cost.

Applicants are required to submit a budget using the SF–424A form. Please use a descriptive file name that includes Tribal name and project description. For example: IBIPBudget.Tribalname.Project. When preparing budget information for the SF–424, applicants should plan to apply for funding in the range of $100,000–$300,000 a year for three years.

The budget must identify the amount of grant funding requested and a comprehensive breakdown of all projected and anticipated expenditures, including contracted personnel fees, consulting fees (hourly or fixed), travel costs, data collection and analysis costs, computer rentals, report generation, drafting, advertising costs for a proposed project and other relevant project expenses, and their subcomponents. Budget cost codes and items must be necessary and reasonable

as they directly relate to the incubator project proposal. Justifications must be provided:

- Administrative Costs associated with search, review and selection of external hires, including administrative support and supervision of liaison(s).
- Salary and Fringe Benefit costs that will be coordinated with OIED to ensure salary costs are reasonable and relatively consistent across the liaison network nationwide.
- Travel costs should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current Federal government per diem schedule.
- Data collection and analysis costs should be itemized in sufficient detail for the OIED review committee to evaluate the charges.
- Other expenses may include computer rental, report generation, drafting, and advertising costs for a proposed project.
- Match requirements must also be documented, as outlined per Section VI. Required Non-Federal Contribution, of this notice.

Annual Meetings: Applicants are required to attend annual IBIP meetings. Some of the meetings may be held in Washington, DC, and some of the meetings may be held in a regional location. For the annual meetings, grantees should have allocated sufficient grant funding in their proposed program budgets to cover travel, accommodation, and per diem expenses for two individuals for a 1½ day meeting that will occur once each year. OIED may specify the individuals who will attend these meetings (*e.g.,* Project Directors, Business Incubator participants). Additional funds for these expenses will not be available once grants are awarded.

Commitment of Non-Federal Resources Description: Amounts of non-federal resources that will be used to support the project as identified in Block 18 of the SF–424. This line should be used to indicate required and/or voluntary committed cost sharing or matching, if applicable.

For all federal awards: Any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the recipient's cost sharing, or matching when such contributions meet all of the criteria listed in 2 CFR 200.306.

For awards that require matching or cost sharing by statute: Recipients will be held accountable for projected commitments of non-federal resources (at or above the statutory requirement) in their application budgets and budget justifications by budget period, or by project period for fully funded awards. A recipient's failure to provide the statutorily required matching or cost sharing amount (and any voluntary committed amount in excess) may result in the disallowance of federal funds. Recipients will be required to report these funds in the Federal Financial Report.

Justification: If an applicant is relying on cost share or match from a third-party, then a firm commitment of these resources (letter(s) or other documentation) is required to be submitted with the application. Detailed budget information must be provided for every funding source identified in Item 18. ''Estimated Funding ($)'' on the SF–424.

Applicants are required to fully identify and document in their applications the specific costs or contributions they propose in order to meet a matching requirement. Applicants are also required to provide documentation in their applications on the sources of funding or contribution(s). In-kind contributions must be accompanied by a justification of how the stated valuation was determined. Matching or cost sharing must be documented by budget period (or by project period for fully funded award.

Applications that lack the required supporting documentation will not be disqualified from competitive review; however, it may impact an application's scoring under the evaluation criteria.

Key Contacts [V2.0]: Applicants must include the Key Contacts information page that includes:

- Lead Applicant contact information including address, email, desk, and cell phone number;
- If there is more than one contact, please provide an additional key contacts form.
- Please use a descriptive file name that includes Tribal name and identifies that it is the critical information page (CIP). For example: IBIPCIP.Tribalname.Project.

Attachments [V1.2]: Utilize the *Attachments Form* to include a Tribal Resolution, as applicable, issued in the fiscal year of the grant application, authorizing the submission of a FY 2022 IBIP grant application. It must be signed by authorized Tribal representative(s). The Tribal resolution must also include a description of the business plan to be implemented. The attachments form can also be used to include any other attachments related to the proposal.

Special Notes:

- Please make sure that System for Award Management (SAM) number used to apply is active, not expired, with a current Unique Entity Identifier (EUI) number on the SF–424;
- Please make sure an *active* Automated Standard Application for Payment (ASAP) number is provided. Applicants *must* have an ASAP number for the Bureau of Indian Affairs to be eligible;
- Please list the county(ies) where the project is located and congressional district number(s) where the project is located.

XI. Incomplete Applications

Applications submitted without one or more of the mandatory components described above will be returned to the applicant with an explanation. The applicant will then be allowed to correct any deficiencies and resubmit the proposal for consideration on or before the deadline. This option will not be available to an applicant once the deadline has passed.

XII. Review and Selection Process

Upon receiving a IBIP application, OIED will determine whether the application is complete and that the proposed project does not duplicate or overlap previous or currently funded Federal or OIED projects. Any proposal that is received after the date and time in the **DATES** section of this notice will not be reviewed. If an application is not complete and the submission deadline has not passed, the applicant will be notified and given an opportunity to resubmit its application.

The OIED Review Committee, comprised of OIED staff, staff from other Federal agencies, and subject matter experts, will evaluate the proposals against the ranking criteria per Section XIII. Evaluation Criteria, of this notice. Proposals will be evaluated with a maximum achievable total of 100 points.

Final award selections will be approved by the Assistant Secretary—Indian Affairs and the Associate Deputy Secretary, U.S. Department of the Interior. Applicants not selected for award will be notified in writing.

XIII. Evaluation Criteria

Proposals will be formally evaluated by an OIED review committee using criteria listed below. Each criterion provides a percentage of the total maximum rating of 100 points. Key criteria that will be considered in the review process include:

- The ability of the eligible Applicant(s) to:
  - Operate a business incubator that effectively imparts entrepreneurship and business skills to Native businesses and Native entrepreneurs, as

demonstrated by the experience and qualifications of the eligible applicant;

○ Commence providing services within three months; and

○ Provide quality incubation services to a significant number of Native businesses and Native entrepreneurs or provide such services at geographically remote locations where quality business guidance and counseling is difficult to obtain;

• The experience of the eligible applicant in providing services in Native American communities, including in the one or more reservation communities described in the application;

• The extent to which a grant award will enable an entity that is already providing business incubation services to appreciably enhance those services; and

• The proposed location of the business incubator.

○ OIED will evaluated the location of the business incubator to:

▪ Consider the program goal of achieving broad geographic distribution of business incubators; and

▪ Give priority to eligible applicants that will provide business incubation services on or near the reservation of the one or more communities that were described in the application, except that OIED may give priority to an eligible applicant that is not located on or near the reservation of the one or more communities that were described in the application if OIED determines that:

• The location of the business incubator will not prevent the eligible applicant from providing quality business incubation services to Native businesses and Native entrepreneurs from the one or more reservation communities to be served; and

• Documenting that the business incubator in the identified location will serve the interests of the one or more reservation communities to be served.

○ OIED will conduct the site evaluation:

• Before awarding a grant to an eligible applicant, OIED will conduct an evaluation of the proposed site to verify that the applicant has (or will have) the physical workspace, equipment, and connectivity necessary for Native businesses and Native entrepreneurs to collaborate and conduct business on a local, regional, national, and/or international level.

• To determine whether the site meets the requirements of paragraph above:

○ If the applicant is in possession of the proposed site, OIED will conduct an on-site or virtual visit or review a video submission before awarding the grant.

○ If the applicant is not yet in possession of the proposed site and has submitted a written site proposal, OIED will review the written site proposal before awarding the grant and will conduct an on-site or virtual visit or review a video submission to ensure the site is consistent with the written site proposal no later than one year after awarding the grant. If OIED determines the site is not consistent with the written site proposal, OIED will use that information in determining the ongoing eligibility of the applicant under § 1187.50.

Business Incubator Operation Description: 25 Points.

Description of Providing Services Within Three Months: 10 points.

Description of Incubation Services to Entities and Locations: 25 points.

Description of Reservation Community(ies) Served: 15 points.

Location of Business Incubator: 10 points.

Budget Justification (Line Item Budget and Budget Narrative): 15 points.

Business Incubator Operation Description: 25 Points.

Points will be awarded based on the applicant's description of how they will operate a business incubator that will effectively impart entrepreneurship and business skills to Native businesses and Native entrepreneurs, as demonstrated by the experience and qualifications of the eligible applicant. Milestone goals and objectives and outcomes of the project proposal should outline the success parameters and deliverables of the incubator through the term of the grant, see Section X. Mandatory Components, of this notice.

Description of Providing Services Within Three Months: 10 Points

The Applicant proposal must demonstrate the ability for the incubator to begin providing services within three months from the date of award.

Description of Incubation Services to Entities and Locations: 25 Points

Points will be awarded based on the Applicant's ability to provide quality incubation services to a significant number of Native businesses and Native entrepreneurs or provide such services at geographically remote locations where quality business guidance and counseling are difficult to obtain. ''Significant'' will be considered the relative quality incubation services provided to the number of Native businesses and Native entrepreneurs in the proposal to the overall amount of funding requested. Identified goal(s) of the anticipated number of Native businesses starting, and the anticipated number of Native businesses help maintaining.

The Applicant will have broad discretion in determining what structure their competitive process will be in selecting participants into their incubator program. They will also determine appropriate curriculum, training and program completion requirements that determine participant ''graduation.''

Description of Reservation Community(ies) Served: 15 Points

The Applicant's proposal must demonstrate experience in providing services in Native American communities. Applicants have flexibility in who they identify to serve, which must identify one or more reservation communities, regardless if the communities are near their own Tribe's homelands. Applicant must demonstrate they are serving a diverse population and include justifications around socioeconomic factors and considerations related to size and location, often to geographically remote locations where quality business guidance and counseling is difficult to obtain. Applicants may see Regional and diverse market representation across Indian Country.

Location of Business Incubator: 10 Points

Applicant must have a location secured that provides physical space to its participating businesses. Whereas the applicant does not have to be in possession of the proposed site at the time of application, it must be secured as soon as services are provided.

Budget Justification (Line Item Budget and Budget Narrative): 15 Points

Points will be awarded based on the reasonableness of the proposed IBIP project in view of the types and range of activities to be conducted and the expected outcomes and benefits. The application includes a strong plan for oversight of federally awarded funds and activities. In particular, the application describes the rules and procedures in place to ensure the prudent use, proper disbursement, and accurate accounting of funds. The budget includes expenses for travel and accommodation costs for two IBIP representatives to attend the 1½ day IBIP annual meeting in Washington, DC, or another regional location. For the purpose of estimating travel expenses, the program can use the Washington, DC, area as the location for the regional location. If a virtual IBIP annual meeting is convened, grantees can reallocate their travel funds back to their budget.

XIV. Transfer of Funds

OIED's obligation under this solicitation is contingent on receipt of congressionally appropriated funds. No liability on the part of the U.S. Government for any payment may arise until funds are made available to the awarding officer for this grant and until the recipient receives notice of such availability, to be confirmed in writing by the grant officer.

All payments under this agreement will be made by electronic funds transfer through the ASAP system. All award recipients are required to have a current and accurate UEI number to receive funds. All payments will be deposited to the banking information designated by the Bureau of Indian Affairs in the SAM.

OIED will disburse grant funds awarded to eligible applicants in annual installments except that, OIED may make disbursements more frequently, on request by the applicant, as long as disbursements are not made more frequently than quarterly. IBIP grant awards may not be duplicative of existing Federal funding from another source that overlaps funding for the same activities described in the Applicant's proposal.

XV. Reporting Requirements for Award Recipients

The applicant must deliver all products and data required by the signed Grant Agreement for the proposed IBIP grant to OIED within 30 days of the end of each reporting period and 120 days after completion of the project. The reporting periods will be established in the terms and conditions of the final award. IBIP will require yearly cumulative financial reporting per a SF–425. IBIP will require annual Performance reporting, which will be used to conduct annual grantee evaluations towards renewal determinations, as well as final reports due at the end of the 3-year term.

The Performance Report will include:

- Not later than one year after the date OIED awards the grant, and then annually for the duration of the grant, the awardee must submit to OIED a report describing the services the awardee provided under the IBIP during the preceding year, including:
  - A detailed breakdown of the Native businesses and Native entrepreneurs receiving services from the business incubator, including, for the year covered by the report:
    - The number of Native businesses and Native entrepreneurs participating in or receiving services from the business incubator and the types of services provided to those Native businesses and Native entrepreneurs;
    - The number of Native businesses and Native entrepreneurs established and jobs created or maintained; and
    - The number of Native businesses and Native entrepreneurs maintained; and
    - The performance of Native businesses and Native entrepreneurs while participating in the business incubator and after graduation or departure from the business incubator; and
  - Any other information the Secretary may require to evaluate the performance of a business incubator to ensure appropriate implementation of the IBIP.
- To the maximum extent practicable, OIED will not require an awardee to report the information listed above that the awardee provides to OIED under another program.
- OIED will coordinate with the heads of other Federal agencies to ensure that, to the maximum extent practicable, the report content and form above are consistent with other reporting requirements for Federal programs that provide business and entrepreneurial assistance.

Annual Evaluations will measure successful outcomes of the grant based on the identified milestones and outcomes from the incubator project application, as well as identified deliverables. OIED will measure performance of an awardee's business incubator as it compares to the performance of other business incubators receiving grants under IBIP. The reporting function will not require detailed capital investments and revenue growth information, instead it will focus on the total number of Native businesses and entrepreneurs the incubator assists and their performance while participating and after graduation or departure from the incubator.

OIED oversight reporting is tracking grant funding only, not incubator activities. Proper justification and use of grant funds in the application and through the term of the grant are required. Release of business and entrepreneur financial disclosures, that may deter participation in the program, will not be required. Equity created from the program should be reinvested back into the program by mentoring and sharing best practices with other businesses.

OIED requires that deliverable products be provided in digital format and submitted in the GrantSolutions system. Reports can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures should be converted to PDF format. Raster images can be provided in PDF, JPEG, TIFF, or any of the Windows metafile formats. The contract between the grantee and the consultant conducting the IBIP grant must include deliverable products and require that the products be prepared in the format described above.

The contract should include budget amounts for all printed and digital copies to be delivered in accordance with the grant agreement. In addition, the contract must specify that all products generated by a consultant belong to the grantee and cannot be released to the public without the grantee's written approval. Products include, but are not limited to, all reports and technical data obtained, maps, status reports, and the final report.

In addition, this funding opportunity and financial assistance award must adhere to the following provisions in Section XVI Conflicts of Interest through Section XIX Authority.

XVI. Conflicts of Interest

Applicability

- This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict of interest provisions in 2 CFR 200.318 apply.

Requirements

- Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or sub-recipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or sub-recipient or in development of the requirement leading to the funding announcement.

• No actual or prospective recipient or sub-recipient may solicit, obtain, or use non-public information regarding the evaluation, award, administration of an award to that recipient or sub-recipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or sub-recipient.

Notification

• Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.

• Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by sub-recipients.

• Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

• Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

• Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make the required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

Data Availability

• Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.

• Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

• Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third-party evaluation and reproduction of the following:

- The scientific data relied upon;
- The analysis relied upon; and
- The methodology, including models, used to gather and analyze data.

XVII. Questions and Requests for OIED Assistance

OIED staff may provide technical consultation, upon written request by an applicant. The request must clearly identify the type of assistance sought. Technical consultation does not include funding to prepare a grant proposal, grant writing assistance, or pre-determinations as to the likelihood that a proposal will be awarded. The applicant is solely responsible for preparing its grant proposal. Technical consultation may include clarifying application requirements, confirming whether an applicant previously submitted the same or similar proposal, and registration information for SAM or ASAP.

XVIII. Paperwork Reduction Act

The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 4040–0004. The authorization expires on December 31, 2022. An agency may not conduct or sponsor, and Applicant is not required to respond to, any information collection that does not display a currently valid OMB Control Number.

XIX. Authority

This is a discretionary grant program authorized under the Native American Business Incubators Program Act, Public Law 116–174, codified at 25 U.S.C. 5801. The IBIP, also known as the Native American Business Incubator's Program, is a program in which OIED provides competitive grants to eligible applicants to establish and operate business incubators that serve Tribal reservation communities. Congress enacted the Native American Business Incubators Program and required the Secretary to promulgate regulations to implement the program, see 25 U.S.C. 5804. The regulations are codified at 25 CFR part 1187 and provide the framework for operation of the grant program so that there is certainty as to who is eligible for a grant, how eligible applicants can apply for a grant, how OED will evaluate, award and administer the grants, and what terms and conditions will apply to the grants. The Final Rule enabled OED to provide grants that will stimulate economic development in reservation communities.

Bryan Newland,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033623; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Florence Indian Mound Museum, Florence, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Florence Indian Mound Museum has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Florence Indian Mound Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Florence Indian Mound Museum at the address in this notice by April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Brian Murphy, Florence Arts and Museums, 217 E Tuscaloosa Street, Florence, AL 35630, telephone (716) 570–5613, email *bmurphy@florenceal.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the

Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Florence Indian Mound Museum, Florence, AL. The human remains were removed from Lauderdale County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Florence Indian Mound Museum professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas [*previously* listed as Alabama-Coushatta Tribes of Texas] and The Chickasaw Nation (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Sometime in the 1970s, human remains representing, at minimum, one individual were removed from Lauderdale County, AL. In December of 2019, the human remains were brought to the Kennedy-Douglass Center for the Arts by a man who claimed that his friend had removed the human remains from an unidentified site in Lauderdale County in the 1970s. The human remains—two tibia, one mandible, two parietal bones, one scapula, one radius, one ulna, one humerus, one thoracic bone, one rib, and one occipital bone—belong to an individual of unknown age and sex. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Florence Indian Mound Museum

Officials of the Florence Indian Mound Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on consultation with Katie Fillers, Tennessee Valley Authority archeological contractor.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of, at minimum, one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas [*previously* listed as Alabama-Coushatta Tribes of Texas]; Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Kialegee Tribal Town; Poarch Band of Creek Indians [*previously* listed as Poarch Band of Creeks]; Shawnee Tribe; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Brian Murphy, Florence Arts and Museums, 217 E. Tuscaloosa Street, Florence, AL 35630, telephone (716) 570–5613, email *bmurphy@florenceal.org,* by April 22, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Florence Indian Mound Museum is responsible for notifying The Consulted Tribes and The Tribes that this notice has been published.

Dated: March 17, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–06128 Filed 3–22–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033622; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the BIA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the BIA at the address in this notice by April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, NAGPRA Coordinator, Bureau of Indian Affairs, 1001 Indian School Road NW, Room 341, Albuquerque, NM 87104, telephone (505) 563–3013, email *BJ.Howerton@bia.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum (ASM), University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from locations within the

boundaries of the Fort Apache Indian Reservation, Gila and Navajo Counties, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by ASM and BIA professional staff in consultation with representatives of the Hopi Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Between 1963 and 1977, two cultural items were removed from site AZ P:14:1(ASM), also known as the Grasshopper Pueblo, in Navajo County, AZ. The items were removed during legally authorized excavations conducted by the University of Arizona Archeological Field School. Archeological collections from the site were brought to ASM at the end of each field season and accessioned. The two associated funerary objects are textile fragments.

Site AZ P:14:1(ASM) is a large village site containing approximately 500 rooms in more than a dozen stone room blocks arranged around three main plazas. The site has been dated A.D. 1275–1400 based on tree ring dates, architectural forms, building technology, and ceramic styles. These characteristics, as well as the mortuary pattern and other items of material culture, are consistent with the archeologically described Upland Mogollon or prehistoric Western Pueblo tradition.

In the summers of 1939 and 1940, human remains representing, at minimum, two individuals were removed from site AZ P:16:1(ASM), also known as Bear Ruin, in Navajo County, AZ. These excavations were legally authorized and carried out by Emil Haury under the auspices of ASM and the Department of Anthropology at the University of Arizona. Archeological collections from Haury's excavations, including human remains and associated funerary objects, were brought to ASM at the end of each field season. The human remains (designated as ''F.B. 05'' and ''F.B. 07'') belong to two adults of indeterminate sex. No known individuals were identified. The three associated funerary objects are one turquoise pendant, one ceramic sherd, and one bone awl.

Site AZ P:16:1(ASM) consists of 14 houses, two storage rooms, and a kiva. The site has been dated A.D. 600–800 based on ceramic styles, architectural forms, and tree-ring data. These characteristics, as well as the mortuary pattern and other items of material culture, are consistent with the Mogollon archeological tradition.

In the summers of 1940 and 1941, human remains representing, at minimum, one individual were removed from site AZ P:16:2(ASM), also known as Tla Kii, in Navajo County, AZ. These excavations were legally authorized and carried out by Emil Haury under the auspices of ASM and the Department of Anthropology at the University of Arizona. Archeological collections from Haury's excavations, including human remains, were brought to ASM at the end of each field season. The skull of this individual was retained by a student, Mr. Langenwalter, who worked under Haury. The human remains were in the custody of Mr. Langenwalter's family until 2007, when his daughter contacted ASM to transfer the remains. The human remains most likely belong to a mature adult male. No known individual was identified. No associated funerary objects are present.

Site AZ P:16:2(ASM) consists of three pit houses, one storage structure, two structures, a main pueblo, two kivas, and 14 storage pits. Based on architectural forms and ceramic styles, along with other items of material culture, the site is dated A.D. 900–1200 and is associated with the Mogollon archeological tradition.

In the summers of 1941 and 1944, human remains representing, at minimum, one individual were removed from site AZ P:16:20(ASM), also known as Bluff Site, in Navajo County, AZ. These excavations were legally authorized and carried out by Emil Haury under the auspices of ASM and the Department of Anthropology at the University of Arizona. Archeological collections from Haury's excavations, including human remains, were brought to ASM at the end of each field season. The fragmentary human remains (designated as ''Grid E5, burial 1'') most likely belong to a juvenile or older individual of indeterminate sex. No known individual was identified. No associated funerary objects are present.

Site AZ P:16:20(ASM) comprises a pit house village belongs to the Cottonwood and Hilltop phases of the Mogollon archeological culture. It is dated A.D. 200–600 based on architectural forms and tree-ring samples.

In the summer of 1966, human remains representing, at minimum, 18 individuals were removed from site AZ P:16:62(ASM), also known as Skiddy Canyon Ruin, in Navajo County, AZ. These excavations, led by Laurens Hammack of ASM in conjunction with ASM and the Museum of Northern Arizona, were legally authorized and carried out as part of the Highway Salvage program of the Arizona Highway Department (project no. F–026–1[17]). Archeological collections from these excavations were sent to ASM in March of 1967; the remains of one of the individuals were sent to ASM in March of 1979. The human remains are designated ''burial 01, feature 6,'' an infant; ''burial 02, feature 14,'' a young adult female; ''burial 03, feature 17,'' an adult of indeterminate sex; ''burial 04, feature 18,'' an adult male; ''burial 05, feature 19,'' a mature adult female; ''burial 06, feature 21,'' a mature adult of indeterminate sex; ''burial 07, feature 22,'' a mature adult male; ''burial 09, feature 24,'' a mature adult female; ''burial 10, feature 20,'' an adult male; ''Feature 0 (General Surface),'' an adult of indeterminate sex; ''Feature 1,'' an adult of indeterminate sex; ''Floor against S. wall of Feature 16,'' an adult of indeterminate sex; ''from fill of Feature 12,'' an adult of indeterminate sex; ''from ventilator fill of Feature 15,'' an adult of indeterminate sex; ''general fill of feature 20 (Kiva),'' an adult of indeterminate sex; ''general fill of Feature 4 (3811),'' a juvenile or older of indeterminate sex; ''general fill of Feature 4 (3394),'' an adult of indeterminate sex; ''burial 11,'' a mature adult male. No known individuals were identified. The 13 associated funerary objects are one jar, four bowls, two stone fragments, one worked faunal bone, one projectile point, two shell beads, one pitcher, and one shell bracelet fragment.

Site AZ P:16:62(ASM) consists of a pit house, kiva, an eight-room pueblo, and associated trash areas. Based on architectural forms and ceramic styles, along with other cultural materials, the site dates A.D. 600–1200 and is associated with the Mogollon archeological tradition.

Between 1931 and 1939, human remains representing, at minimum, one individual were removed from site AZ V:4:1, also known as Kinishba, in Gila County, AZ. Excavations at this time were legally authorized and were directed by Byron Cummings under the auspices of ASM and the Department of Anthropology at the University of Arizona. No known individuals were

identified. No associated funerary objects are present.

Archeological collections from the 1931–1939 excavations were brought to ASM, where they were assigned number AP–CU. On January 1, 1936, additional cultural remains sent from the Western Archaeological and Conservation Center (WACC) to ASM were assigned number AP–40. In 1941 and 1952, ASM loaned collections from site AZ V:4:1 to the Kinishba Museum, to be used for exhibits at the site. On July 24, 1956, following reports of disrepair and vandalism at the Kinishba Museum, these collections were moved back to ASM. On September 22, 1958, Emil Haury made plans to move archeological and museum collections from AZ V:4:1 to the Southwest Archaeological Center (SWAC) in Globe, AZ, in anticipation of a proposed National Monument at the site. On February 5, 1969, the collections housed at SWAC were returned to ASM when it became clear that Kinishba National Monument would not be created. Collection items from this transfer were assigned number AP–2118. On January 1, 1938, August 10, 1953, and February 23, 2003, additional archeological materials from this site were found in ASM collections and were assigned numbers AP–45, AP–647, and AP–CU respectively.

Site AZ V:4:1 is a large, plaza-oriented pueblo containing more than 600 rooms arranged in eight masonry room groups on both sides of a drainage running through the site. It was occupied between around A.D. 1225 and 1450, based on tree-ring dates, architectural forms, building technology, and ceramic styles. These characteristics, as well as the mortuary patterns and other items of material culture recovered at this site, are consistent with the archeologically described Upland Mogollon or prehistoric Western Pueblo tradition.

A detailed discussion on culturally affiliating the archeological sites in this region may be found in *Cultural Affiliation Assessment of White Mountain Apache Tribal Lands (Fort Apache Indian Reservation),* by John R. Welch and T.J. Ferguson (2005). To summarize, archeologists have used the terms Upland Mogollon or prehistoric Western Pueblo to define the archeological complex represented by the above-described sites. The material culture of these traditions is characterized by a temporal progression from earlier pit houses to later masonry pueblos, villages organized in room blocks of contiguous dwellings associated with plazas, rectangular kivas, polished and paint decorated ceramics, unpainted corrugated ceramics, weaving traditions, inhumation burials, cradleboard cranial deformation, grooved stone axes, and bone artifacts. Archeologists have long linked the Western Pueblo tradition to the present-day Indian Tribes in the region that comprise the Western Pueblo ethnographic group, especially the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico. The similarities in ceramic traditions, burial practices, architectural forms, and settlement patterns have led archeologists to believe that the prehistoric inhabitants of the Mogollon Rim region migrated north and west to the Hopi mesas, and north and east to the Zuni River Valley. Certain objects found in Upland Mogollon archeological sites bear strong resemblances to ritual paraphernalia that are used in present-day Hopi and Zuni religious practices. Some petroglyphs on the Fort Apache Indian Reservation have also persuaded archeologists that continuities exist between the earlier identified group and current-day Western Pueblo people. In addition, biological information from site AZ P:14:1(ASM) supports the view that the prehistoric occupants of the Upland Mogollon region had migrated from various locations to the north and west of the region.

Hopi and Zuni oral traditions parallel the archeological evidence for migration. Migration figures prominently in Hopi oral tradition, which refers to the ancient sites, pottery, stone tools, petroglyphs, and other artifacts left behind by the ancestors as ''Hopi Footprints.'' This migration history is complex and detailed. It includes traditions relating specific clans to the Mogollon region. Hopi cultural advisors have also identified medicinal and culinary plants at archeological sites in the region. Their knowledge about these plants was passed down to them from the ancestors who inhabited these ancient sites. Migration is also an important attribute of Zuni oral tradition and includes accounts of Zuni ancestors passing through the Upland Mogollon region. The ancient villages mark the routes of these migrations. Zuni cultural advisors remark that the ancient sites were not abandoned. People returned to these places from time to time, either to reoccupy them or for religious pilgrimages—a practice that has continued to the present day. Archeologists have found ceramic evidence at shrines in the Upland Mogollon region that confirms these reports. Zuni cultural advisors have names for plants endemic to the Mogollon region that do not grow on the Zuni Reservation. They also have knowledge about traditional medicinal and ceremonial uses for these resources, which has been passed down to them from their ancestors. Furthermore, Hopi and Zuni cultural advisors have recognized that their ancestors may have been co-resident at some of the sites in this region during their ancestral migrations.

There are differing points of view regarding the possible presence of Apache people in the Upland Mogollon region during the time that the above sites were occupied. Some Apache traditions describe interactions with Ancestral Puebloan people during this time, but according to these stories, Puebloan people and Apache people were regarded as having separate identities. The White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, does not claim cultural affiliation with the human remains and associated funerary objects from these sites.

Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs

Officials of the U.S. Department of the Interior, Bureau of Indian Affairs have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 23 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 18 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. BJ Howerton, NAGPRA Coordinator, Bureau of Indian Affairs, 1001 Indian School Road NW, Room 341, Albuquerque, NM 87104, telephone (505) 563–3013, email *BJ.Howerton@bia.gov,* by April 22, 2022.

After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The U.S. Department of the Interior, Bureau of Indian Affairs with assistance of the Arizona State Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: March 17, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–06130 Filed 3–22–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–OIA–DTS–33245; PPWODIREI0–PIN00IO15.XI0000–223P104215]

Submission of U.S. Nomination to the World Heritage List

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior has submitted a nomination to the World Heritage List for the ''Hopewell Ceremonial Earthworks,'' consisting of eight properties in Ohio, five of which are in Hopewell Culture National Historical Park in Ross County: Hopeton Earthworks, Mound City, High Bank Works, Hopewell Mound Group and Seip Earthworks; and three that are National Historic Landmarks: Fort Ancient in Licking County, owned by the State of Ohio, and the Octagon Earthworks and Great Circle Earthworks in Warren County, owned by the state-chartered Ohio History Connection. This is the third notice required by the Department of the Interior's World Heritage Program regulations.

ADDRESSES: To request paper copies of documents discussed in this notice, contact April Brooks, Office of International Affairs, National Park Service, 1849 C St. NW, Room 2415, Washington, DC 20240 (202) 354–1808, or sending electronic mail (Email) to: *april_brooks@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Morris, Chief, Office of International Affairs at (202) 354–1803 or Jonathan Putnam, International Cooperation Specialist, at (202) 354–1809. Complete information about U.S. participation in the World Heritage Program and the process used to develop the U.S. World Heritage Tentative List is posted on the National Park Service, Office of International Affairs website at: *https://www.nps.gov/subjects/internationalcooperation/worldheritage.htm.*

SUPPLEMENTARY INFORMATION: This constitutes the official notice of the decision by the United States Department of the Interior to submit a nomination to the World Heritage List for the ''Hopewell Ceremonial Earthworks,'' as enumerated in the Summary above, and serves as the Third Notice referred to in 36 CFR 73.7(j) of the World Heritage Program regulations (36 CFR part 73).

The nomination was submitted through the U.S. Department of State to the World Heritage Centre of the United Nations Educational, Scientific and Cultural Organization (UNESCO) for consideration by the World Heritage Committee, which will likely occur at the Committee's 46th annual session in mid-2023.

This property has been selected from the U.S. World Heritage Tentative List, which comprises properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List, as required by the World Heritage Committee's Operational Guidelines.

The U.S. World Heritage Tentative List appeared in a **Federal Register** notice on December 9, 2016 (81FR 89143) with a request for public comment on possible nominations from the 19 sites on the Tentative List. A summary of the comments received, the Department of the Interior's responses to them and the Department's decision to request preparation of this nomination appeared in a subsequent **Federal Register** Notice published on May 25, 2018 (83 FR 24337–24338). These are the First and Second Notices required by 36 CFR 73.7(c) and (f).

In making the decision to submit this U.S. World Heritage nomination, pursuant to 36 CFR 73.7(h) and (i), the Department's Assistant Secretary for Fish and Wildlife and Parks evaluated the draft nomination and the recommendations of the Federal Interagency Panel for World Heritage. She determined that the property meets the prerequisites for nomination by the United States to the World Heritage List that are detailed in 36 CFR part 73. The properties are nationally significant, being part of a unit of the National Park System established by Act of Congress or having been designated by the Department of the Interior as individual National Historic Landmarks. The owners of the properties have concurred in writing with the nomination, and each property is well protected legally and functionally as documented in the nomination. It appears to meet two of the World Heritage criteria for cultural properties.

The ''Hopewell Ceremonial Earthworks'' are nominated under World Heritage cultural criteria (i) and (iii), as provided in 36 CFR 73.9(b)(1), as a group, or ''series,'' that collectively appears to justify criterion (i) by demonstrating a masterpiece of human creative genius: A 2,000-year-old series of precise squares, circles, and octagons and a hilltop sculpted to enclose a vast plaza. They were built on an enormous scale and the geometric forms are consistently deployed across great distances and encode alignments with both the sun's cycles and the far more complex patterns of the moon. The series also justifies criterion (iii) in providing testimony to its builders, people now referred to as the Hopewell Culture: Dispersed, non-hierarchical groups whose way of life was transitioning from foraging to farming. The earthworks were the center of a continent-wide sphere of influence and interaction and have yielded exceptionally finely crafted ritual objects fashioned from raw materials obtained from distant places. The properties, both individually and as a group, also meet the World Heritage requirements for integrity and authenticity.

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The World Heritage Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer. Although the United States is not a member of UNESCO, it continues to participate in the World Heritage Convention, which is an independent treaty. There are 1,154 World Heritage sites in 167 of the 194 signatory countries. The United States has 24 sites inscribed on the World Heritage List.

U.S. participation and the role of the Department of the Interior are authorized by title IV of the National Historic Preservation Act Amendments of 1980, Public Law 96–515, 94 Stat. 2987, 3000, codified as amended at 54 U.S.C. 307101, and conducted by the Department through the National Park Service in accordance with the regulations at 36 CFR part 73 which implement the Convention pursuant to the 1980 Amendments.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor do they give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. federal and local laws, as applicable.

Authority: 54 U.S.C. 307101; 36 CFR part 73.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–06121 Filed 3–22–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033621; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the BIA. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the BIA at the address in this notice by April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, NAGPRA Coordinator, Bureau of Indian Affairs, 1001 Indian School Road NW, Room 341, Albuquerque, NM 87104, telephone (505) 563–3013, email *BJ.Howerton@bia.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ (ASM), that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Between 1963 and 1977, 40 cultural items were removed from site AZ P:14:1(ASM), also known as the Grasshopper Pueblo, in Navajo County, AZ. The items were removed during legally authorized excavations conducted by the University of Arizona Archeological Field School. Archeological collections from the site were brought to ASM at the end of each field season and accessioned. The 40 unassociated funerary objects are 39 tree ring samples and one piece of mineral pigment.

Site AZ P:14:1(ASM) is a large village site containing approximately 500 rooms in more than a dozen stone room blocks arranged around three main plazas. The site has been dated to A.D. 1275–1400 based on tree ring dates, architectural forms, building technology, and ceramic styles. These characteristics, the mortuary pattern, and other items of material culture are consistent with the archeologically described Upland Mogollon or prehistoric Western Pueblo tradition.

In the summers of 1939 and 1940, 136 cultural items were removed from site AZ P:16:1(ASM), also known as Bear Ruin, in Navajo County, AZ. These excavations were legally authorized and carried out by Emil Haury under the auspices of ASM and the Department of Anthropology at the University of Arizona. Archeological collections from Haury's excavations were brought to ASM at the end of each field season and accessioned. The 136 unassociated funerary objects are one bone awl, two bone awl fragments, one incised bone, 39 ceramic bowls, one ceramic canteen, one ceramic disc, five ceramic vessel fragments, one human figurine fragment, 25 ceramic jars, six miniature vessels, seven ceramic pitchers, eight sherds, 18 pieces of mineral concretion or pigment, one piece of unfired clay, two turquoise beads, three turquoise pendants, 14 shell bracelet fragments, and one shell necklace.

Site AZ P:16:1(ASM) consists of 14 houses, two storage rooms, and a kiva. The site has been dated to A.D. 600–800 based on ceramic styles, architectural forms, and tree-ring data. These characteristics, the mortuary pattern, and other items of material culture are consistent with the Mogollon archeological tradition.

In the summers of 1940 and 1941, 63 cultural items were removed from site AZ P:16:2(ASM), also known as Tla Kii, in Navajo County, AZ. These excavations were legally authorized and carried out by Emil Haury under the auspices of ASM and the Department of Anthropology at the University of Arizona. Archeological collections from Haury's excavations were brought to ASM at the end of each field season and accessioned. The 63 unassociated funerary objects are 32 ceramic bowls, one ceramic canteen, three ceramic vessel fragments, one human figurine fragment, seven ceramic jars, one miniature vessel, three ceramic pitchers, one ceramic plate, one ceramic scoop, one ceramic scraper, one sherd, two lithic scrapers, one piece of mineral concretion, six lots of stone beads, and two turquoise pendants.

Site AZ P:16:2(ASM) consists of three pit houses, one storage structure, two other structures, a main pueblo, two kivas, and 14 storage pits. Based on architectural forms and ceramic styles, along with other items of material culture, the site is dated to A.D. 900–1200, and it is associated with the Mogollon archeological tradition.

In the summers of 1941 and 1944, one cultural item was removed from site AZ P:16:20(ASM), also known as Bluff Site, in Navajo County, AZ. These excavations were legally authorized and carried out by Emil Haury under the auspices of ASM and the Department of Anthropology at the University of Arizona. Archeological collections from Haury's excavations were brought to ASM at the end of each field season. Collections were not accessioned upon receipt at ASM; an accession of ''none 1940s'' was later assigned. The one unassociated funerary object is a ceramic bowl.

Site AZ P:16:20(ASM) comprises a pit house village dating to the Cottonwood and Hilltop phases of the Mogollon archeological culture, and it dates to A.D. 200–600 based on architectural forms and tree-ring samples.

In the summer of 1966, three cultural items were removed from site AZ P:16:62(ASM), also known as Skiddy Canyon Ruin, in Navajo County, AZ. These excavations were legally authorized and were carried out in conjunction with the ASM and the Museum of Northern Arizona under the direction of Laurens Hammack of ASM as part of the Highway Salvage program of the Arizona Highway Department (project no. F–026–1[17]). Archeological collections from these excavations were transferred to ASM in March of 1967. The three unassociated funerary objects are one ceramic pitcher, one ceramic jar, and one shell bead.

Site AZ P:16:62(ASM) consists of a pit house, kiva, eight-room pueblo, and associated trash areas. Based on architectural forms and ceramic styles, along with other items of cultural belongings, the site dates to A.D. 600–1200, and it is associated with the Mogollon archeological tradition.

A detailed discussion of the basis for cultural affiliation of archeological sites in the region where the above sites are located may be found in ''*Cultural Affiliation Assessment of White Mountain Apache Tribal Lands (Fort Apache Indian Reservation)*'' by John R. Welch and T.J. Ferguson (2005). To summarize, archeologists have used the terms Upland Mogollon or prehistoric Western Pueblo to define the archeological complex represented by the above-described sites. The material culture of these traditions is characterized by a temporal progression from earlier pit houses to later masonry pueblos, villages organized in room blocks of contiguous dwellings associated with plazas, rectangular kivas, polished and paint decorated ceramics, unpainted corrugated ceramics, weaving traditions, inhumation burials, cradleboard cranial deformation, grooved stone axes, and bone artifacts. Archeologists have long linked the Western Pueblo tradition to present-day Indian Tribes in the region belonging to the Western Pueblo ethnographic group and in particular, to the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico. The similarities in ceramic traditions, burial practices, architectural forms, and settlement patterns have led archeologists to believe that the prehistoric inhabitants of the Mogollon Rim region migrated north and west to the Hopi mesas, and north and east to the Zuni River Valley. Certain objects found in Upland Mogollon archeological sites have been found to have strong resemblances with ritual paraphernalia that are used in continuing religious practices by the Hopi and Zuni. Some of the petroglyphs on the Fort Apache Indian Reservation have also persuaded archeologists of continuities between the earlier identified group and current-day Western Pueblo people. Biological information from site AZ P:14:1(ASM) supports the view that the prehistoric occupants of the Upland Mogollon region had migrated from various locations to the north and west of the region.

Hopi and Zuni oral traditions parallel the archeological evidence for migration. Migration figures prominently in Hopi oral tradition, which refers to the ancient sites, pottery, stone tools, petroglyphs, and other artifacts left behind by the ancestors as ''Hopi Footprints.'' This complex and detailed migration history includes traditions that relate specific clans to the Mogollon region. Hopi cultural advisors have also identified medicinal and culinary plants at archeological sites in the region. According to them, knowledge about these plants had been passed down from the ancestors who inhabited these ancient sites. Migration is also an important attribute of Zuni oral tradition. That tradition includes accounts of Zuni ancestors passing through the Upland Mogollon region. The ancient villages mark the routes of these migrations. According to Zuni cultural advisors, the ancient sites were not abandoned. Rather, people returned to them from time to time, either for the purpose of reoccupying them or for religious pilgrimages—a practice that has continued to the present day. Archeologists have found ceramic evidence at shrines in the Upland Mogollon region that confirms these reports. Zuni cultural advisors have names for plants endemic to the Mogollon region that do not grow on the Zuni Reservation. They also have knowledge about traditional medicinal and ceremonial uses for these resources, which has been passed down to them from their ancestors. Furthermore, Hopi and Zuni cultural advisors have recognized that their ancestors may have been co-resident at some of the sites in this region during their ancestral migrations.

There are differing points of view regarding the possible presence of Apache people in the Upland Mogollon region during the time that these sites were occupied. Some Apache traditions describe interactions with Ancestral Pueblo people during this time, but according to these stories, Puebloan people and Apache people were regarded as having separate identities. The White Mountain Apache Tribe of the Fort Apache Reservation, Arizona does not claim to be culturally affiliated with the human remains and associated funerary objects from this site. As reported by Welch and Ferguson (2005), consultations between the Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona have indicated that none of these Indian Tribes wishes to assert a cultural affiliation with sites on White Mountain Apache Tribal lands. Finally, the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona supports the repatriation of any human remains and associated funerary objects from these sites, and it is ready to assist the Hopi Tribe of Arizona and Zuni Tribe of the Zuni Reservation, New Mexico in their reburial.

Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs

Officials of the U.S. Department of the Interior, Bureau of Indian Affairs have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 243 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. BJ Howerton, NAGPRA Coordinator, Bureau of Indian Affairs, 1001 Indian School Road NW, Room 341, Albuquerque, NM 87104, telephone (505) 563–3013, email *BJ.Howerton@bia.gov,* by April 22, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Tribes may proceed.

The U.S. Department of the Interior, Bureau of Indian Affairs, with the assistance of the Arizona State Museum,

is responsible for notifying The Tribes that this notice has been published.

Dated: March 17, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–06129 Filed 3–22–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–539 and 731–TA–1280–1282 (Review)]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Korea, Mexico, and Turkey

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on heavy walled rectangular welded carbon steel pipes and tubes from Turkey and the antidumping duty orders on heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 2, 2021 (86 FR 41511) and determined on November 5, 2021 that it would conduct expedited reviews (87 FR 7498, February 9, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on March 17, 2022. The views of the Commission are contained in USITC Publication 5297 (March 2022), entitled *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea, Mexico, and Turkey: Investigation Nos. 701–TA–539 and 731–TA–1280–1282 (Review).*

By order of the Commission.

Issued: March 17, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06123 Filed 3–22–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1230]

Certain Electric Shavers and Components and Accessories Thereof Commission Decision Finding a Violation of Section 337; Issuing a General Exclusion Order and Cease and Desist Orders; Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to affirm the presiding administrative law judge (''ALJ's'') initial determination (''ID'') (Order No. 33) finding a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a general exclusion order and cease and desist orders prohibiting the importation of certain electric shavers and components and accessories thereof. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On November 18, 2020, the Commission instituted this investigation based on a complaint filed by Complainant Skull Shaver (''Skull Shaver'') of Moorestown, New Jersey. 85 FR 73510–11 (Nov. 18, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric shavers and components and accessories thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,726,528 (''the '528 patent'') and D672,504 (''the '504 design patent''). *Id.* The Commission's notice of investigation named the following eleven entities as respondents: Rayenbarny Inc. (''Rayenbarny'') of New York, New York; Bald Shaver Inc. (''Bald Shaver'') of Toronto, Canada; Suzhou Kaidiya Garments Trading Co., Ltd. (''Suzhou'') d.b.a. ''Digimator'' of Suzhou, China; Shenzhen Aiweilai Trading Co., Ltd. (''Aiweilei'') d.b.a. ''Teamyo'' of Shenzhen, China; Wenzhou Wending Electric Appliance Co., Ltd. of Yueqing City, China; Shenzhen Nukun Technology Co., Ltd. (''Nukun'') d.b.a. ''OriHea'' of Shenzhen, China; Yiwu Xingye Network Technology Co. Ltd. (''Yiwu Xingye'') d.b.a. ''Roziapro'' of Yiwu, China; Magicfly LLC (''Magicfly'') of Hong Kong; Yiwu City Qiaoyu Trading Co., Ltd. (''Yiwu City'') of Yiwu, China; Shenzhen Wantong Information Technology Co., Ltd. (''Wantong'') d.b.a. ''WTONG'' of Shenzhen, China; and Shenzhen Junmao International Technology Co., Ltd. (''Junmao'') d.b.a. ''Homeas'' of Shenzhen, China. The notice of investigation also named the Office of Unfair Import Investigations (''OUII'') as a party. *Id.*

The Commission terminated Rayenbarny from the investigation because its accused product was actually imported by Benepuri LLC (''Benepuri'') of Menands, New York; the Commission allowed Benepuri to intervene as a respondent. Notice, 85 FR 82514, 82515 (Dec. 18, 2020). The Commission later granted Skull Shaver's motion to amend the Complaint and the notice of investigation to correct the name of Wenzhou Wending Electric Appliance Co., Ltd. d.b.a. ''Paitree'' as Wenzhou Wending Electric Appliance Co., Ltd. (''Wenzhou''), and to correct the addresses of several respondents. Notice, 86 FR 14645, 14645 (Mar. 17, 2021). The Commission terminated Magicfly from the investigation on the basis of settlement. Notice at 2 (May 19, 2021). The Commission terminated Nukun and Benepuri from the investigation on the basis of withdrawal of the complaint. Notice at 2 (June 21, 2021) (Nukun); Notice at 2 (Oct. 28, 2021) (Benepuri). All of the remaining respondents (*i.e.,* all respondents other than Magicfly, Nukun, Benepuri and Rayenbarny) defaulted. *See* Notice at 3 (May 21, 2021) (seven defaulting respondents); Notice at 2 (Dec. 9, 2021) (Bald Shaver defaulting). Taken together, the eight defaulting respondents are: Suzhou; Yiwu City; Wenzhou; Aiweilai; Junmao; Wantong; Yiwu Xingye; and Bald Shaver.

On May 26, 2021, Skull Shaver filed a motion for summary determination of

violation of section 337 by the eight defaulting respondents and for a recommendation that the Commission issue a general exclusion order (''GEO'') and cease and desist orders (''CDOs''). *See* Complainants' Motion for Summary Determination of Violation and for Recommended Determination on Remedy and Bonding. Skull Shaver accused Yiwu Xingye and Yiwu City of infringing claims 1–3 of the '528 patent and the claim of the '504 design patent. *Id.* at 5. It accused the other respondents of infringing only claim 1 of the '528 patent. *Id.* On June 7, 2021, OUII filed a response in support of Skull Shaver's motion. *See* Commission Investigative Staff's Response to Skull Shaver's Motion for Summary Determination of Violation. No respondent filed a response to Skull Shaver's motion.

On September 23, 2021, OUII filed a notice of supplemental authority concerning the domestic industry requirement. On September 28, 2021, the ALJ issued an order (Order No. 31) ordering certain supplementation of Skull Shaver's domestic industry analysis. On October 14, 2021, Skull Shaver submitted its supplement in response to Order No. 31. No other responses to Order No. 31 were filed. On November 18, 2021, the ALJ granted-in-part Skull Shaver's motion for summary determination as the subject ID.

The ID found that Skull Shaver owns the asserted patents, and that those patents are valid and enforceable. ID at 3. The ID further found that although all respondents imported, sold for importation, or sold within the United States after importation at least one accused article, the only respondents whose articles infringe the asserted patents are Yiwu Xingye and Yiwu City. *Id.* at 3–4. The ID found no infringement as to the other respondents, whose products lack a second recess, *see* ID at 51–52, in view of the ALJ's construction of ''recesses'' as ''indentations that are substantially concave surfaces,'' *id.* at 16 (citation omitted), and Skull Shaver's forfeiture of an infringement theory under the doctrine of equivalents, *id.* at 50 n.7. The ID found that personal jurisdiction is not necessary over each defaulting respondent, but that the defaulting respondents waived any opportunity to contest the allegation that personal jurisdiction exists. *Id.* The ID further found that Skull Shaver meets the technical prong and the economic prong of the domestic industry requirement. *Id.* at 4. As to remedy, the RD found that there is a widespread pattern of unauthorized use of the asserted patents and it is difficult to identify the source of these products; and that a GEO is necessary to prevent circumvention. *Id.* at 4. The RD also recommended issuance of CDOs against the two infringing respondents, who are presumed to maintain domestic inventories. RD at 80–81. The RD recommended a bond rate of one hundred percent (100%) because complete pricing information is not available. RD at 82.

No petitions for review of the ID were filed. The Commission determined to review the ID's findings concerning the economic prong of the domestic industry requirement, and not to review the ID's findings on other issues. Notice, 87 FR 990, 991 (Jan. 7, 2022). The review notice solicited written submissions, including on remedy, the public interest, and bonding from the parties, interested government agencies, and the public. *Id.*

In response to the Commission notice, Skull Shaver and OUII each filed an opening submission and a reply. No other parties filed submissions.

On review, the Commission has determined to affirm the ID's finding that Skull Shaver has satisfied the economic prong of the domestic industry requirement, and the Commission thereby affirms the ID's finding of a violation of section 337.

The Commission finds that the RD's recommended remedy is appropriate for the reasons set forth in the attached opinion. Accordingly, the Commission finds that the appropriate remedy is: (1) A general exclusion order prohibiting the entry of certain electric shavers and components and accessories thereof; and (2) cease and desist orders directed to Yiwu Xingye and Yiwu City. The Commission has determined that the public interest factors enumerated in section 337(d), (f), and/or (g), 19 U.S.C. 1337(d), (f), (g), do not preclude the issuance of the GEO or the CDOs.

The Commission has determined that a bond in the amount of one hundred percent (100%) of the entered value of the subject articles is required during the Presidential review period, 19 U.S.C. 1337(j) for the reasons set forth in the RD and the attached Commission Opinion. The investigation is hereby terminated.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission vote for these determinations took place on March 17, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 17, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06122 Filed 3–22–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–985]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey Pharmaceutical Materials, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Johnson Matthey Pharmaceutical Materials, Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 23, 2022. Such persons may also file a written request for a hearing on the application on or before May 23, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not

instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 28, 2022, Johnson Matthey Pharmaceutical Materials, Inc., 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Noroxymorphone	9145	I
Difenoxin	9168	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
ANPP (4-Anilino-N-phenethyl-4-piperidine).	8333	II
Norfentanyl (N-phenyl-N-(piperidin-4-yl) propionamide).	8366	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates or for sale to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–06159 Filed 3–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–979]

Importer of Controlled Substances Application: Sharp Clinical Services, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sharp Clinical Services, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 22, 2022. Such persons may also file a written request for a hearing on the application on or before April 22, 2022.

ADDRESSES: The DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 2, 2022, Sharp Clinical Services, Inc. 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020–8024, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
3,4-Methylenedioxymethamphetamine.	7405	I

The company plans to import the listed control substances for clinical trials. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–06161 Filed 3–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–984]

Bulk Manufacturer of Controlled Substances Application: Siemens Healthcare Diagnostics, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siemens Healthcare Diagnostics, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 23, 2022. Such persons may also file a written request for a hearing on the application on or before May 23, 2022.

ADDRESSES: The Drug Enforcement Administration (DEA) requires that all comments be submitted electronically

through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 17, 2022, Siemens Healthcare Diagnostics Inc., 100 GBC Drive, Mailstop 514, Newark, Delaware 19702–2461, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to produce the listed controlled substance in bulk to be used in the manufacture of DEA exempt products. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–06162 Filed 3–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–986]

Bulk Manufacturer of Controlled Substances Application: Usona Institute, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Usona Institute, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 23, 2022. Such persons may also file a written request for a hearing on the application on or before May 23, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 16, 2022, Usona Institute, Inc., 2780 Woods Hollow Road, Room 2413, Fitchburg, Wisconsin 53711, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocin	7438	I

The company plans to bulk manufacture the listed controlled substances for use in chemical process development as well as pre-clinical and clinical research.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–06166 Filed 3–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–987]

Bulk Manufacturer of Controlled Substances Application: Patheon API Manufacturing, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Patheon API Manufacturing, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 23, 2022. Such persons may also file a written request for a hearing on the application on or before May 23, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 2, 2022, Patheon API Manufacturing, Inc., 309 Delaware Street, Greenville, South Carolina 29605–5420, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Tetrahydrocannabinols	7370	I
5-Methoxy-N-N-Dimethyltryptamine.	7431	I
Alpha-Methyltryptamine	7432	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II

The company plans to bulk manufacture the listed controlled substances as an Active Pharmaceutical Ingredient (API) for distribution to its customers. In reference to dug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–06167 Filed 3–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0078]

Office of Private Sector; Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision and Renewal of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Office of Private Sector, Department of Justice.

ACTION: 30 day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Office of Private Sector, is 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.

DATES: The Department of Justice encourages public comment and will accept input until April 22, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Private Sector, including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and renewal of a currently approved collection

2. *The Title of the Form/Collection:* Voice of Customer Survey

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Office of Private Sector.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Survey will affect businesses or other for-profit, and not-for-profit institutions. The survey is intended to measure the effectiveness of the FBI's Office of Private Sector's engagement efforts with the Private Sector and Academia.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Approximately 900 respondents. *Average response time:* 15 minutes per respondent.

6. *An estimate of the total public burden (in hours) associated with the collection:* 225 hours (15 min × 900 respondents).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 18, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–06156 Filed 3–22–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1797]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *https://bja.ojp.gov/program/it/global*. Due to ongoing COVID–19 mitigation restrictions, this meeting will be held virtually. Approved observers will receive the log-information prior to the meeting.

DATE: The meeting will take place on Tuesday April 19, 2021 from 1:00 p.m. to 3:00 p.m. ET.

ADDRESSES: The meeting will be held virtually via Zoom for Government. Approved observers will receive the login/sign-in information via email prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Lewis, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 616–7829 [note: this is not a toll-free number]; email: *david.p.lewis@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public, however, members of the public who wish to attend this meeting must register with Mr. David P. Lewis at least (7) days in advance of the meeting. Access to the virtual meeting room will not be allowed without prior authorization. All attendees will be required to virtually sign-in via Zoom before they will be admitted to the virtual meeting.

Anyone requiring special accommodations should notify Mr. Lewis at least seven (7) days in advance of the meeting.

Purpose: The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Global DFO.

David P. Lewis,

Global DFO, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

[FR Doc. 2022–06086 Filed 3–22–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0022]

Bay Area Compliance Laboratories Corporation: Request for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces Bay Area Compliance Laboratories Corporation (BACL), application requesting renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before April 7, 2022.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions. Please note: While OSHA's docket office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the rulemaking record by express delivery, hand delivery, and messenger service.

Instructions: All submissions must include the agency name and OSHA docket number for this **Federal Register** notice (OSHA–2016–0022). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before April 7, 2022 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of a NRTL signifies that the organization meets the requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details its scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications by a NRTL for renewal of recognition following requirements in appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, Appendix A, paragraph II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA, not less than nine months or no more than one year, before the expiration date of its current recognition. The submission includes a request for renewal and any additional information the NRTL wishes to submit to demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL's headquarters and key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicit comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

BACL initially received OSHA recognition as a NRTL on April 6, 2017 (82 FR 16856) for a five-year period that ends on April 6, 2022. BACL submitted a timely request for renewal, dated July 7, 2021 (OSHA–2016–0022–0013), and retains its recognition pending OSHA's final decision in this renewal process. The current address of the BACL facility recognized by OSHA and included as part of the renewal request is:

- Bay Area Compliance Laboratories Corporation, 1274 Anvilwood Avenue, Sunnyvale, California 94089.

II. Notice of Preliminary Findings

OSHA is providing notice that BACL is applying for renewal of its recognition as a NRTL. This renewal covers BACL's existing NRTL scope of recognition. OSHA evaluated BACL's application for renewal and preliminarily determined that BACL can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. Accordingly, OSHA is making a preliminary determination that it does not need to conduct an additional on-site review of BACL's facility based on its evaluations of BACL's application and all other available information. This information includes OSHA's most recent audit of BACL's NRTL recognized site during this recognition period, and the satisfactory resolution of non-conformances with the requirements of 29 CFR 1910.7. This preliminary finding does not constitute an interim or temporary approval of the request.

OSHA welcomes public comment as to whether BACL meets the requirements of 29 CFR 1910.7 for renewal of its recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in BACL's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2016–0022.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary on whether to grant BACL's application for renewal. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 15, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–06134 Filed 3–22–22; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2022–46; Order No. 6122]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing requesting the transfer of Post Office Box service at a small number of selected locations from the market dominant to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 29, 2022. *Reply comments are due:* May 13, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On March 16, 2022, the Postal Service filed a request under 39 U.S.C. 3642 and 39 CFR 3040.130, *et seq.* to transfer Post Office Box service at a small number of selected locations from the market dominant to the competitive product list.[1]

Background. The Commission has previously approved two Postal Service requests to transfer Post Office Box service from the market dominant product list to the competitive product list. By Order No. 473 [2] and Order No. 780,[3] the Commission approved the transfer of approximately 6,800 locations to the competitive product list. Request at 1. The Postal Service states that the requests were based upon whether the Post Office Box customers had sufficient access to private mailbox service providers. *Id.* The Postal Service further states that at the time of its requests, ''it was conducting further evaluations of all Post Office Box locations and might in the future seek the transfer of additional locations, if warranted, as it develops its understanding of the mailbox service market.'' *Id.* at 1–2 (footnote omitted). It further states that based on Commission approved criteria, it expanded the competitive service to one additional location in 2013, to 1,625 locations in 2014 and to 227 locations in 2021. *Id.* at 2.

Having recently completed further evaluation of the criteria that indicate competitive status, the Postal Service requests the Commission to transfer an additional 297 locations from the market dominant to the competitive Post Office Box fee group. *Id.* The Postal Service requests the Commission to update the criteria applied to competitor locations to build upon the existing five-mile criterion and extend it by three miles to a range of eight miles. *Id.* The Request claims recent market research ''shows customers are willing to travel longer distances for P.O. Box service than the current five-mile criterion recognizes.'' *Id.* It notes that the request for 297 locations represent a very small proportion of the 32,788 locations offering Post Office Box service. *Id.*

Supporting materials. To support its Request, the Postal Service filed the following attachments:

- Attachment A—Resolution of the Governors of the United States Postal Service, Transfer of Selected Post Office Box Service Locations to the Competitive Product List, May 6, 2021 (Resolution No. 21–12);
- Attachment B—Statement of Supporting Justification; and
- Attachment C—Proposed Mail Classification Schedule Changes.

Notice of filings. The Commission establishes Docket No. MC2022–46 to consider the Postal Service's proposals described in its Request.

Interested persons may submit comments on whether the Request is consistent with the policies of 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and the general provisions of title 39. Comments are due by April 29, 2022. Reply comments are due by May 13, 2022. The Request and related filings are available on the Commission's website (*https://www.prc.gov*). The Commission encourages interested persons to review the Request for further details.

The Commission appoints Eric D. Hughes to serve as Public Representative in this proceeding.

It is ordered:

1. The Commission establishes Docket No. MC2022–46 to consider the matters raised by the Postal Service's Request.

2. Pursuant to 39 U.S.C. 505, Eric D. Hughes is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by April 29, 2022.

4. Reply comments are due by May 13, 2022.

[1] Request of the United States Postal Service to Transfer Post Office Box Service in Selected Locations to the Competitive Product List, March 16, 2022 (Request).

[2] Docket No. MC2010–20, Order Approving Request to Transfer Selected Post Office Box Service Locations to the Competitive Product List, June 17, 2010 (Order No. 473).

[3] Docket No. MC2011–25, Order Approving Request to Transfer Additional Post Office Box Service Locations to the Competitive Product List, July 29, 2011 (Order No. 780). The Request erroneously cites to Order No. 870 which relates to a different proceeding.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–06145 Filed 3–22–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 8, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 737 to Competitive Product List*. Documents are available at *www.prc.gov,* Docket Nos. MC2022–45, CP2022–51.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–06165 Filed 3–22–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94447; File No. SR–NASDAQ–2022–023]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 8, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize its processes and procedures under Options 3, Section 20 with those of its affiliated options exchange.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize its existing processes for the review of decisions on appeal under Options 3, Section 20 with those of its affiliate Nasdaq Phlx LLC (''Phlx''). The Exchange also proposes several non-substantive, conforming changes in Options 3, Section 1.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, a party to a transaction affected by a decision made under this section may appeal that decision to the Exchange Review Council. An appeal must be made in writing, and must be received by the Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed.

The Exchange proposes generally to maintain its current appeal process with certain additions to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.[3] Similar to Phlx, the Exchange believes that this flexibility will be helpful for Participants in submitting their appeal requests in a timely manner, particularly where notification of the Official's decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k).

Second, the Exchange proposes to add a provision for when the Exchange Review Council panel must render a decision on requests for appeal to harmonize to Phlx's process. Specifically, the Exchange proposes in Options 3, Section 20(k) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.[4]

Options 3, Section 1

The Exchange proposes non-substantive, conforming amendments to Options 3, Section 1 (Days and Hours of Business). The Exchange first proposes to amend the title from ''Days and Hours of Business'' to ''Hours of Business.'' The Exchange recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[5] At this time, the Exchange also proposes to amend Options 3, Section 1(c) which provides, ''NOM shall not be open for business on any

[3] *See* Phlx Options 3, Section 20(l).

[4] *See* Phlx Options 3, Section 20(l) for analogous language.

[5] *See* Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR–NASDAQ–2021–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

holiday observed by The Nasdaq Stock Market, LLC.'' The Exchange proposes to instead provide, ''NOM shall not be open for business as provided within General 3, Section 1030.'' This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. Finally, the Exchange proposes to update citations to the Options 4 rules related to Exchange-Traded Fund Shares and Index-Linked Securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to amend the current appeal process to harmonize with Phlx's appeal process is consistent with the Act because it will continue to afford Participants with due process in connection with decisions made by Officials under Options 3, Section 20 that the Participant may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Participants in submitting their appeal requests in a timely manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day, and is designed to reduce administrative burden on the Exchange.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames with those of its affiliate in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Participants of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Lastly, the Exchange's proposal to amend Options 3, Section 1 (Days and Hours of Business) as described above will bring greater clarity, and ensure that this Rule conforms to the changes made in the recent filing to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[8] The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion, and ensuring that market participants and investors can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. As it relates to the proposed changes to the appeal process under Options 3, Section 20(k), the changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–023. 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 (*https://www.sec.gov/*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 5.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–NASDAQ–2022–023 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06088 Filed 3–22–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94455; File No. SR–C2–2022–008]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Related to the Market-Wide Circuit Breaker in Rule 5.20.01 to April 18, 2022

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2022, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 5.20.01 to April 18, 2022. The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 5.20.01 to the close of business on April 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 5.20.01, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules'', including Exchange Rule 5.20.01).[5] The Securities and Exchange Commission (the ''Commission'') approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 5.20.01 (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.20.01 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] The Exchange subsequently amended Rule 5.20.01 to extend the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SRNYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] *See* Securities Exchange Act Release Nos. 68769 (January 30, 2013), 78 FR 8213 (February 5, 2013) (SR–C2–2013–006) (amending Rule 6.32.03, which was later renumbered to Rule 5.20.01, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 5.20.01).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[9] *See* Securities Exchange Act Release No. 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 5.20.01).

pilot to the close of business on October 18, 2020,[10] October 18, 2021,[11] and March 18, 2022.[12] The Exchange now proposes to amend Rule 5.20.01 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 5.20.01.

As stated above, because all U.S. equity exchanges and FINRA adopted uniform Pilot Rules relating to market-wide circuit breakers in 2012, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 5.20.01. Pursuant to Rule 5.20.01, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020. In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[13]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force. The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[14] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m. In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[15]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the New York Stock Exchange LLC's Filing To Make the Pilot Rules Permanent

On July 16, 2021, an SRO member of the Working Group, the New York Stock Exchange (''NYSE''), proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[16] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[17] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule change.[18] On January 7, 2022, the Commission extended its time to approve or disapprove the proposed rule change by an additional 60 days, to March 19, 2022.[19] The Exchange understands that upon approval of this proposal, the other national securities exchanges and FINRA, including the Exchange, will also submit substantively identical proposals to the

[10] *See* Securities Exchange Act Release No. 87342 (October 18, 2019), 84 FR 57102 (October 24, 2019) (SR–C2–2019–022).

[11] *See* Securities Exchange Act Release No. 90158 (October 13, 2020), 85 FR 66388 (October 19, 2020) (SR–C2–2020–015).

[12] *See* Securities Exchange Act Release No. 93374 (October 18, 2021), 86 FR 58706 (October 22, 2021) (SR–C2–2021–015).

[13] *See https://www.cmegroup.com/content/dam/cmegroup/marketregulation/rulefilings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/marketregulation/rulefilings/2020/9/20-392_2.pdf.*

[14] *See* Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events, submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_MarketWide_Circuit_Breaker_Working_Group.pdf.*

[15] *See id.* at 46.

[16] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40) (the ''NYSE Proposal'').

[17] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[19] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

Commission. The Exchange now proposes to extend the expiration date of its Pilot Rules to the end of business on April, 18, 2022.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 5.20.01 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the proposed rule change to make the Pilot Rules permanent.[23]

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 5.20.01 should continue on a pilot basis because the MWCB will promote fair and orderly markets and protect investors and the public interest.

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6)[25] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[28]

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–C2–2022–008 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–C2–2022–008. 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

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] *See supra* notes 16 and 17.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–C2–2022–008 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06103 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94456; File No. SR–CboeBYX–2022–008]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.18 to April 18, 2022

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2022, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 proposal to extend the pilot related to the market-wide circuit breaker in Rule 11.18 to April 18, 2022. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/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

BYX Rules 11.18(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.,* market-wide circuit breakers. The market-wide circuit breaker (''MWCB'') mechanism was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7] The Exchange subsequently amended Rule 11.18 to extend the pilot's effectiveness to October 18, 2020,[8] October 18, 2021,[9] and March 18, 2022.[10] Now, the Exchange proposes to amend Rule 11.18 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 11.18.

The market-wide circuit breaker under Rule 11.18 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[11] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.18, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85665 (April 16, 2019), 84 FR 16749 (April 22, 2019) (SR–CboeBYX–2019–004).

[8] *See* Securities Exchange Act Release No. 87343 (October 18, 2019), 84 FR 57104 (October 24, 2019) (SR–CboeBYX–2019–017).

[9] *See* Securities Exchange Act Release No. 90121 (October 8, 2020), 85 FR 65103 (October 14, 2020) (SR–CboeBYX–2020–028).

[10] *See* Securities Exchange Act Release No. 93364 (October 15, 2021) 86 FR 58324 (October 21, 2021) (SR–CboeBYX–2021–026).

[11] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force. The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[12] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m. In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[13]

The SROs have since worked on a proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations. New York Stock Exchange (''NYSE'') filed such proposed rule change on July 16, 2021.[14] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[15] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule change.[16] On January 7, 2022, the Commission extended its time to approve or disapprove the proposed rule change by an additional 60 days, to March 19, 2022.[17] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 11.18 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs work to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.18 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

[12] *See* Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events, submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_MarketWide_Circuit_Breaker_Working_Group.pdf.*

[13] *See id.* at 46.

[14] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40) (the ''NYSE Proposal'').

[15] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[16] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[17] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs finalize their proposals to make the Pilot Rules permanent. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot following Commission approval of the NYSE proposal. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6)[21] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[24]

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–2022–008 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–2022–008. 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–2022–008 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06104 Filed 3–22–22; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94452; File No. SR–PEARL–2022–08]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend Exchange Rule 2622, Limit Up-Limit Down Plan and Trading Halts

March 17, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule to extend the pilot related to the market-wide circuit breaker mechanism in Rule 2622 to the close of business on April 18, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker mechanism in Rule 2622 to the close of business on April 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 2622, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988. In 2012 all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis [3] and, in 2020, the Exchange adopted the cash equities uniform rule under Exchange Rule 2622(a)–(d) to also operate on a pilot basis [4] (the ''Pilot Rules''). The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[5] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

Exchange Rule 2622 was approved by the Commission to operate on a pilot basis set to expire on at the close of business on October 18, 2020.[6] The Exchange subsequently amended Rule 2622 to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2021 [7] and March 18, 2022.[8]

The Exchange now proposes to amend Rule 2622 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 2622.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[9]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order''). *See also* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03) (''Equities Approval Order'') (approving, among other things, Exchange Rule 2622).

[4] *See* Equities Approval Order, *id.*

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* Exchange Rule 504(a) *and* NYSE Arca Rule 6.65–O(d)(4).

[6] *See* Equities Approval Order, *supra note 3.*

[7] *See* Securities Exchange Act Release No. 90124 (October 8, 2020), 85 FR 65105 (October 14, 2020) (SR–PEARL–2020–20).

[8] *See* Securities Exchange Act Release No. 93331 (October 14, 2021), 86 FR 58130 (October 20, 2021) (SR–PEARL–2021–50).

[9] See *https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20–392_2.pdf.*

built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[10] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[11]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the New York Stock Exchange LLC (''NYSE'') proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[12] On January 7, 2022, the Commission extended its time to consider the proposed rule change to March 19, 2022.[13] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The MWCB mechanism under Rule 2622 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional one month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the MWCB pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[22]

[10] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[11] *See id.* at 46.

[12] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[13] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also

Continued

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) [23] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PEARL–2022–08 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94454; File No. SR–CBOE–2022–013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Related to the Market-Wide Circuit Breaker in Rule 5.22 to April 18, 2022

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 5.22 to April 18, 2022. The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*https://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 5.22 to the close of business on April 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 5.22, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules'', including Exchange Rule 5.22).[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SRNYSEAmex–2011–73; SR–

The Securities and Exchange Commission (the ''Commission'') approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 5.22[7] (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.22 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange subsequently amended Rule 5.22 to extend the pilot to the close of business on October 18, 2020,[11] October 18, 2021,[12] and March 18, 2022.[13] The Exchange now proposes to amend Rule 5.22 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 5.22.

As stated above, because all U.S. equity exchanges and FINRA adopted uniform Pilot Rules relating to market-wide circuit breakers in 2012, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 5.22. Pursuant to Rule 5.22, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020. In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[14]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force. The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[15] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism

NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] In October 2019, the Exchange restructured its Rulebook and relocated previous Rule 6.3B, governing the MWCB mechanism, to current Rule 5.22. No substantive changes were made to the rule. *See* Securities Exchange Act Release No. 87224 (October 4, 2019), 84 FR 54652 (October 10, 2019) (SR–CBOE–2019–081).

[8] *See* Securities Exchange Act Release Nos. 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011) (SR–CBOE–2011–087) (amending Rule 5.22, prior Rule 6.3B, for determining when to halt trading in all stocks and stock options due to extraordinary market volatility); 68770 (January 30, 2013), 78 FR 8211 (February 5, 2013) (SR–CBOE–2013–011) (amending Rule 5.22, prior Rule 6.3B, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[10] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[11] *See* Securities Exchange Act Release No. 87341 (October 18, 2019), 84 FR 57081 (October 24, 2019) (SR–CBOE–2020–100).

[12] *See* Securities Exchange Act Release No. 90165 (October 13, 2020), 85 FR 66391 (October 19, 2020) (SR–CBOE–2020–098).

[13] *See* Securities Exchange Act Release No. 93372 (October 18, 2021), 86 FR 58709 (October 22, 2021) (SR–CBOE–2021–060).

[14] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rulefilings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/marketregulation/rule-filings/2020/9/20-392_2.pdf.*

[15] *See* Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events, submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_MarketWide_Circuit_Breaker_Working_Group.pdf.*

set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m. In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[16]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the New York Stock Exchange LLC's Filing To Make the Pilot Rules Permanent

On July 16, 2021, an SRO member of the Working Group, the New York Stock Exchange (''NYSE''), proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[18] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule change.[19] On January 7, 2022, the Commission extended its time to approve or disapprove the proposed rule change by an additional 60 days, to March 19, 2022.[20] The Exchange understands that upon approval of this proposal, the other national securities exchanges and FINRA, including the Exchange, will also submit substantively identical proposals to the Commission. The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 5.22 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the NYSE Proposal change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 5.22 should continue on a pilot basis because the MWCB will promote fair and orderly markets and protect investors and the public interest.

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6)[25] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30-

[16] *See id.* at 46

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40) (the ''NYSE Proposal'').

[18] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[19] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[20] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[28]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–013 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–CBOE–2022–013. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–013 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06102 Filed 3–22–22; 8:45 am]

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[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94448; File No. SR–IEX–2022–01]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Market Wide Circuit Breaker to April 18, 2022

March 17, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 16, 2022, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 11.280 to extend the pilot period for the market-wide circuit breaker to the close of business on April 18, 2022. IEX has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Market-Wide Circuit Breaker (''MWCB'') rules, including paragraphs (a) through (d) and (f) of IEX Rule 11.280, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

uniform rules on a pilot basis [8] (the ''Pilot Rules,'' *i.e.,* for IEX, Rule 11.280(a)–(d) and (f) [9]). The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[10] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[11] including any extensions to the pilot period for the LULD Plan.[12] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[13] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended IEX Rule 11.280 to extend the Pilot Rules' effectiveness to the close of business on October 18, 2019.[14] The Exchange subsequently amended IEX Rule 11.280 to untie the Pilot Rules' effectiveness from that of the LULD Plan and extended the Pilot Rules' effectiveness several times: (i) From October 18, 2019 to October 18, 2020; [15] from October 18, 2020 to October 18, 2021; [16] and from October 18, 2021 to March 18, 2022.[17]

The Exchange now proposes to amend IEX Rule 11.280 to extend the pilot one more month, to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to IEX Rule 11.280.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[18]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[19] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10

[8] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[9] IEX's Pilot Rule has been effective since its approval for registration as a national securities exchange in 2016. *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222).

[10] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[11] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). An amendment to the LULD Plan adding IEX as a Participant was filed with the Commission on August 11, 2016, and became effective upon filing pursuant to Rule 608(b)(3)(iii) of the Act. *See* Securities Exchange Act Release No. 78703 (August 26, 2016), 81 FR 60397 (September 1, 2016) (File No. 4–631). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[12] *See, e.g.,* Securities Exchange Act Release No. 78703 (August 26, 2016), 81 FR 60397 (September 1, 2016) (File No. 4–631) (describing the several extensions of the LULD Plan pilot period).

[13] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[14] *See* Securities Exchange Act Release No. 85576 (April 9, 2019), 84 FR 15237 (April 15, 2019) (SR–IEX–2019–04).

[15] *See* Securities Exchange Act Release No. 87298 (October 15, 2019), 84 FR 56255 (October 21, 2019) (SR–IEX–2019–11).

[16] *See* Securities Exchange Act Release No. 90128 (October 8, 2020), 85 FR 65127 (October 14, 2020) (SR–IEX–2020–17).

[17] *See* Securities Exchange Act Release No. 93323 (October 14, 2021), 86 FR 58125 (October 20, 2021) (SR–IEX–2021–12).

[18] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

[19] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

to the Plan to Address Extraordinary Market Volatility (the ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[20]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the New York Stock Exchange (''NYSE'') proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[21] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021;[22] on September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove of the filing;[23] and on January 7, 2022, the Commission again extended the review period for the NYSE filing to make the Pilot Rules permanent, designating March 19, 2022, as the date by which the Commission will either approve or disapprove of the filing.[24]

To allow time for the Commission to make its final decision on the NYSE MWCB filing, the Exchange proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Sections 6(b)[25] and 6(b)(5) of the Act,[26] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The MWCB mechanism under Rule 11.280 is an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. equity markets while the Commission reviews NYSE's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.280(a) through (d) and (f) should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change implicates any competitive issues because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews NYSE's proposed rule change to make the Pilot Rules permanent.

Further, IEX understands that the other SROs will file proposals to extend their rules regarding the MWCB pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[29] and Rule 19b–4(f)(6)(iii) thereunder.[30]

A proposed rule change filed under Rule 19b–4(f)(6)[31] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[32] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[33]

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)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

[20] *See id.* at 46.

[21] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[22] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[23] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[24] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6).

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2022–01 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–IEX–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–IEX–2022–01 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06089 Filed 3–22–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94450; File No. SR–NASDAQ–2021–099]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change To Amend Nasdaq Rule 5815(d)(4) Regarding the Use of a Hearings Panel Monitor Following a Compliance Determination by a Nasdaq Listings Qualification Hearings Panel

March 17, 2022.

I. Introduction

On December 10, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Nasdaq Rule 5815(d)(4) regarding the use of a Hearings Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel. The proposed rule change was published for comment in the **Federal Register** on December 21, 2021.[3] On February 3, 2022, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Nasdaq Rule 5300, 5400, and 5500 series set forth the initial listing requirements for a Company[5] seeking to list, as well as continued listing requirements that apply to a Company once listed on, the Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market, respectively. The Nasdaq Rule 5800 series contains the rules and procedures applicable to a Company that does not meet the listing standards outlined in the Nasdaq Rule 5000 series and thus is ''deficient'' with respect to a listing standard.[6] In this circumstance, staff from the Listings Qualifications Department[7] (''Staff'') will issue a notification informing the Company of the deficiency. According to Nasdaq, where allowed by Nasdaq's rules, Staff's notification may provide for a cure or compliance period or allow the company to submit a plan of compliance for Staff to review.[8] Companies that do not regain compliance within any time frame permitted by Staff under a plan of compliance,[9] that do not regain compliance within the specified cure or compliance period,[10] or that has a deficiency type that unless appealed subjects the Company to immediate suspension and delisting[11] will be issued a Staff Delisting Determination[12] and may request that a Hearings Panel[13] (''Hearings Panel'') review such determination. If it deems appropriate, the Hearings Panel may grant an exception (''exception'') to the continued listing standard with respect to the deficiency.[14] However, where a

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93789 (December 15, 2021), 86 FR 72293 (''Notice'').

[4] *See* Securities Exchange Act Release No. 94145, 87 FR 7521 (February 9, 2022) (extending the time period to March 21, 2022).

[5] The term ''Company'' means the issuer of a security listed or applying to list on Nasdaq. *See* Nasdaq Rule 5005(a)(6).

[6] For purposes of this filing, Nasdaq's rules identify deficiencies for which an already listed Company may submit a plan of compliance (Nasdaq Rule 5815(c)(2)); and deficiencies for which the Nasdaq Rules provide a specified cure or compliance period (Nasdaq Rule 5815(c)(3)). While the Rule 5800 rule series also addresses denials of listing for not meeting listing standards, the rule proposal considered herein concerns Companies that are already listed and fail to meet the continued listing standards.

[7] The term ''Staff'' refers to the employees of the Listing Qualifications Department. *See* Nasdaq Rule 5805(g). The ''Listing Qualifications Department'' is the department of Nasdaq responsible for Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company's securities. *See* Nasdaq Rule 5805(f).

[8] *See* Notice, *supra* note 3, at 72293.

[9] *See* Rule 5810(c)(2)(E).

[10] See Rule 5810(c)(3).

[11] *See* Rule 5810(c)(1).

[12] A ''Staff Delisting Determination'' or ''Delisting Determination'' is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard. *See* Nasdaq Rule 5805(h).

[13] The ''Hearings Panel'' is an independent panel made up of at least two persons who are not employees or otherwise affiliated with Nasdaq or its affiliates, and who have been authorized by the Nasdaq Board of Directors. *See* Nasdaq Rule 5805(d).

[14] Pursuant to Nasdaq Rule 5815(c)(1)(A), when the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff

Company has previously been deficient with a listing standard but has regained compliance pursuant to an exception granted by the Hearings Panel, under certain circumstances, Nasdaq states that its rules do not allow a Company the opportunity to submit a plan to regain compliance or provide for a cure or compliance period in the event that the Company incurs another deficiency within one year of the prior deficiency. In these circumstances, Nasdaq Rules 5815(d)(4)(A) or (B) would apply.[15]

According to the Exchange, both Nasdaq Rules 5815(d)(4)(A) and (B) set forth the process by which Staff will issue a Staff Delisting Determination for a Company that fails to maintain compliance with one or more listing standards within one year of having regained compliance pursuant to an exception granted by a Hearings Panel.[16] Currently, Nasdaq Rule 5815(d)(4)(A), entitled ''Hearings Panel Monitor,'' provides, in part, that a Hearings Panel has discretion to monitor a Company (*i.e.,* subject the Company to a ''Hearings Panel Monitor'') for a period of up to one year after the date the Company regains compliance with a listing standard if it concludes that there is a likelihood that such Company will fail to maintain compliance with one or more listing standards during that period (including requirements with which the Company was not previously deficient). During this one-year period in which the Company is under a Hearings Panel Monitor, Staff will monitor the Company to confirm compliance with all listing standards. If Staff identifies a deficiency with any listing standard for a Company being monitored under Nasdaq Rule 5815(d)(4)(A), Nasdaq states that Staff may not provide the Company with a cure or compliance period, nor the opportunity to submit a plan to regain compliance with the deficiency; instead, Staff will issue a Staff Delisting Determination for the Company.

Nasdaq Rule 5815(d)(4)(B) currently states ''[i]f a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to maintain certain levels of stockholders' equity, to timely file periodic reports, or with the bid price requirement where the Company was ineligible for a compliance period under Rule 5810(c)(3)(A)(iii) or (iv) and within one-year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.'' [17] According to the Exchange, while entitled ''No Hearings Panel Monitor'', paragraph (B) of Nasdaq Rule 5815(d)(4) amounts to what is in effect a mandatory Hearings Panel Monitor.[18]

The Exchange has proposed to clarify Nasdaq Rule 5815(d)(4) in several ways. First, the Exchange proposes to clarify that the use of a Hearings Panel Monitor is discretionary if a Company qualifies for monitoring under Nasdaq Rule 5815(d)(4)(A), but the use of a Hearings Panel Monitor is mandatory if a Company qualifies for monitoring under Nasdaq Rule 5815(d)(4)(B). Specifically, the Exchange proposes to modify Nasdaq Rule 5815(d)(4)(A) by adding the word ''Discretionary'' to the heading of Nasdaq Rule 5815(d)(4)(A) to make clear that the Hearings Panel Monitor under that provision is discretionary, and to retitle Nasdaq Rule 5815(d)(4)(B) to ''Mandatory Hearings Panel'' to make clear that a Hearings Panel Monitor under that provision is mandatory. In addition, the Exchange proposes to further modify Nasdaq Rule 5815(d)(4)(B) to make explicit the mandatory nature of appointing a Hearings Panel Monitor by stating in the rule that after having been granted an exception to the requirement to maintain certain levels of stockholders' equity, to timely file periodic reports, or with the bid price requirement where the Company was ineligible for a compliance period under Nasdaq Rule 5810(c)(3)(A)(iii) or (iv), a ''Hearings Panel will impose a Hearings Panel Monitor for a period of one year from the date the company regains compliance'' with those three specific listing requirements in Rule 5815(d)(4)(B).

The Exchange proposes to further clarify Nasdaq Rules 5815(d)(4)(A) and (B) by amending those rules to clearly state that under both paragraphs (A) and (B) of the rule, if a Company falls out of compliance with the listing standard deficiency that was the subject of the exception granted by the Listing Qualifications Department during the one-year monitoring period, the Company will not be afforded an applicable cure or compliance period pursuant to Nasdaq Rule 5810(c)(3), nor as currently provided by the rule be permitted to provide the Listing Qualifications Department with a plan of compliance under Nasdaq Rule 5810(c)(2). The Exchange represented that while the original language in both Nasdaq Rule 5815(d)(4)(A) and (B) included language regarding Staff's inability to afford a Company under a Hearings Panel Monitor a cure or compliance period, the current rules do not specifically include a reference to Nasdaq Rule 5810(c)(3) itself.[19] The Exchange believes that adding a specific reference to Nasdaq Rule 5810(c)(3) will remove any potential confusion regarding this point.[20]

The Exchange also proposes to add a new paragraph (C) to Nasdaq Rule 5815(d)(4), which will set out the procedures for a Hearings Panel Monitor that is appointed under either paragraphs (A) or (B) of Nasdaq Rule 5815(d)(4), in the event the Company receives a Staff Delisting Determination during the one-year monitoring period. Pursuant to proposed Nasdaq Rule 5815(d)(4)(C), if a Company receives a Staff Delisting Determination during the one-year period under paragraph (d)(4)(A) or (B) of Nasdaq Rule 5815(d)(4), the Company may request review by a Hearings Panel. Unless subparagraph (C) indicates otherwise, the hearing will be conducted in accordance with the procedures outlined in Nasdaq Rule 5815. Upon a request for a hearing by the Company, the Hearings Department will promptly schedule a new hearing with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election and the Hearings Panel will consider the Company's compliance

Delisting Determination with respect to the deficiency for which the exception is granted. *See* Nasdaq Rule 5815(c)(1)(A).

[15] *See* Notice, *supra* note 3, at 72293.

[16] *See* Notice, *supra* note 3, at 72293.

[17] Nasdaq states that this provision limits the grounds for an immediate Delisting Determination to a recurrence of the initial deficiency in the three enumerated areas in the rule that gave rise to the previous hearing before the Hearings Panel. *See* Notice, *supra* note 3, at 72293–4.

[18] *See Id.* at 72294. The Exchange added that it is not aware of the reason for the original language in Nasdaq Rule 5815(d)(4)(B) stating the rule would not call for a Panel Monitor. *Id.* at n. 6.

[19] *See* Notice, *supra* note 3, at 72294.

[20] *Id.* The rule provisions stating that the Listing Qualification Department cannot grant additional time for the Company to regain compliance will remain in Rule 5815(d)(A) and (B).

history when rendering its decision. If the Company does not request review of the Staff Delisting Determination, then proposed Nasdaq Rule 5815(d)(4)(C) provides that the Company's securities will be suspended. The Exchange stated that as revised, Nasdaq Rule 5815(d)(4)(C) also will correct the erroneous inclusion of language in the current rule which could allow the Hearings Department to promptly schedule a hearing without first receiving a request for appeal from the Company.[21]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act, which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

The Exchange proposes to clarify when a Hearings Panel Monitor is discretionary or mandatory under paragraphs (A) and (B) of Nasdaq Rule 5815(d)(4) by adding the specific terms ''Discretionary'' and ''Mandatory'' to the title of Nasdaq Rule 5815(d)(4)(A) and (B), respectively. The Commission notes that Nasdaq Rule 5815(d)(4)(B) is currently titled ''No Hearings Panel Monitor''; despite this current title, and the current rule language, the Exchange represented that ''the rule itself actually outlines a process of a mandatory Hearings Panel Monitor.'' [24] In this regard, the Commission believes that the proposed rule change will provide necessary clarity to the rule by correcting the inaccurate title to the rule, given that Nasdaq has stated that in effect paragraph (B) sets forth a mandatory Hearings Panel Monitor process. The Exchange has also proposed to make clear when a Hearings Panel will be mandatory by stating explicitly in Nasdaq Rule 5815(d)(4)(B)—but not in Nasdaq Rule 5815(d)(4)(A), which is a discretionary process—that a Hearings Panel will impose a Hearings Panel Monitor for a period of one year from the date the Company regains compliance with the listing standards relating to maintaining certain levels of stockholders' equity, to timely file periodic reports, or with the bid price requirement where the Company was ineligible for a compliance period under Nasdaq Rule 5810(c)(3)(A)(iii) or (iv), following an exception that was granted by a Hearings Panel. The Commission believes that these changes to Nasdaq Rule 5815(d)(4)(A) and (B) will help remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest by removing any confusion or ambiguity about when a Hearings Panel Monitor will be discretionary or mandatory.

The Exchange also proposes to clarify that if a Company falls out of compliance with the listing standard deficiency that was the subject of the exception granted by the Listing Qualifications Department during the one-year monitoring period under either Nasdaq Rule 5815(d)(4)(A) or (B), the Company will not be afforded an applicable cure or compliance period pursuant to Nasdaq Rule 5810(c)(3). The current rule language states that the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance notwithstanding Nasdaq Rule 5810(c)(2) and that the Company cannot be granted any additional time to regain compliance. While the current rule does prohibit any extension of time, the Exchange stated that specifically referencing Rule 5810(c)(3) will avoid any potential confusion.[25] The Commission believes that the proposed change should help to avoid any potential confusion by making clear that a Company cannot receive any extension of time, including by being afforded an applicable cure or compliance period pursuant to Nasdaq Rule 5810(c)(3), and as the rule currently states, by submitting a plan of compliance under Nasdaq 5810(c)(2). Additionally, because the current text of the rules prohibit any additional time to regain compliance, the Commission believes that adding an explicit reference to Nasdaq Rule 5810(c)(3) in Nasdaq Rule 5815(d)(4)(A) and (B) is consistent with the Act because it will clarify and provide transparency on the specific provisions in Rule 5810 that are not available to a Company when a deficiency occurs during the one year monitoring period.

Finally, the Exchange proposed to create a new paragraph (C) to Nasdaq Rule 5815(d)(4) which will outline how a Company may seek an appeal of a Staff Delisting Determination. Pursuant to the Rule, if a Company receives a Staff Delisting Determination during a one-year Hearings Panel Monitor under Nasdaq Rule 5815 (d)(4)(A) or (B), the Company may request review by a Hearings Panel. The Hearings Department will schedule a hearing with the original Hearings Panel or a new Hearings Panel if the original Hearings Panel is unavailable, the hearing may be written or oral, and the Hearings Panel will consider the Company's compliance history when rendering its decision. Nasdaq Rule 5815(d)(4)(C) also provides that unless specifically addressed in the Rule, the procedures for requesting and preparing for a review by a Hearings Panel will continue to be governed by Nasdaq Rule 5815. The Commission believes that it is consistent with the Act to combine the procedures that a Company must follow to request a hearing after receiving a Staff Delisting Determination into one paragraph of Nasdaq Rule 5815(d)(4). Currently, the procedures for requesting a hearing following a Staff Delisting Determination are set forth in either or both paragraphs (A) and (B) of Rule 5815(d)(4). While both paragraphs address such hearings, the differences in the description of and procedures for

[21] *Id.* The Exchange also represents that historically the Hearings Department has not immediately scheduled a new hearing for a Company under a Panel Monitor that has received a Delisting Determination from Staff. According to the Exchange, a new hearing would not be scheduled until the Company in question had requested an appeal from the Delisting Determination. The Exchange states that the proposed rule change will simply codify the existing practice of the Hearings Department. *Id.* at n. 7. In addition, the Exchange described other existing inconsistencies between paragraphs (A) and (B) of Rule 5815(d)(4), but states that each of the provisions will apply to both 5815(c)(4)(A) and (B) through the implementation of proposed Rule 5815(d)(4)(C). *See Id.* at n. 8.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Notice, *supra* note 3, at 72294.

[25] *Id.*

requesting and conducting such hearings between paragraphs (A) and (B) could lead to confusion. Therefore, the Commission believes that providing the same procedures for requesting and conducting a hearing under Rules 5815(d)(4)(A) and (B) and consolidating these procedures into proposed paragraph (C) provides transparency and clarity to such hearings, and thus may help ensure that the Exchange's rules do not permit unfair discrimination between issuers, and provides a fair procedure for review of a Staff Delisting Determination, consistent with the Act.

As the Commission has previously noted, the development and enforcement of meaningful listing standards [26] for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies that have or will have sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets.[27] Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[28] Therefore it is important for exchanges to prevent companies that are deficient in their listing standards or that do not meet initial listing standards from remaining or becoming listed on an exchange. Clarifying the rules and procedures for appeal where a listed Company has recurrent deficiencies so is under a Hearings Panel Monitor and cannot avail itself of additional time to demonstrate compliance, should further investor protection under Section 6(b)(5) of the Act by helping to eliminate potential confusion about the application of Rule 5815(d)(4), while at the same time ensuring such Companies have a fair procedure for review consistent with Section 6(b)(7) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2021–099) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06091 Filed 3–22–22; 8:45 am]

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[26] The Commission notes that this is referring to both initial and continued listing standards.

[27] In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* Securities Exchange Act Release Nos. 82627 (Feb. 2, 2018), 3 FR 5650, 5653, n.53 (Feb. 8, 2018) (SR–NYSE–2017–30); 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* Securities Exchange Act Release Nos. 82627 (Feb. 2, 2018), 3 FR 5650, 5653, n.53 (Feb. 8, 2018) (SR–NYSE–2017–30); 87648 (Dec. 3, 2019), 84 FR 67308, 67314, n.42 (Dec. 9, 2019) (SR–NASDAQ–2019–059); 88716 (Apr. 21, 2020), 85 FR 23393, 23395, n.22 (Apr. 27, 2020) (SR–NASDAQ–2020–001).

[28] *See, e.g.,* Securities Exchange Act Release Nos. 65708 (Nov. 8, 2011), 76 FR 70799 (Nov. 15, 2011) (SR–NASDAQ–2011–073) (order approving a proposal to adopt additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company), and 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2018–17) (order approving a proposal to adopt new initial and continued listing standards to list securities of special purpose acquisition companies).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94451; File No. SR–NASDAQ–2022–025]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees and Credits at Equity 7, Sections 114 and 118 March 17, 2022

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits at Equity 7, Section 118, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of fees and credits, at Equity 7, Sections 114 and 118 to establish pricing for orders executed in the new Extended Trading Close or ''ETC,'' which the Commission approved earlier this year.[3] The proposed fee will be effective coincident with the commencement of the ETC, which the Exchange intends to occur on March 7, 2022.

As set forth in Rule 4755, the Extended Trading Close will allow Participants an additional opportunity to access liquidity in Nasdaq-listed securities at the Nasdaq Official Closing Price for a five minute period of time after the Nasdaq Closing Cross [4] or the LULD Closing Cross,[5] (collectively, the

[3] *See* Securities Exchange Act Release No. 34–94038 (January 24, 2022), 87 FR 4683 (January 28, 2022) (order approving SR–Nasdaq–2021–40, as amended).

[4] The ''Nasdaq Closing Cross'' refers to Nasdaq's process for determining the price at which it will execute orders at the close and for executing those orders, as set forth in Rule 4754.

[5] The ''LULD Closing Cross'' refers to Nasdaq's modified process for determining the price at which

Continued

''Closing Cross'') concludes. During this five minute period, the System will continuously match and execute ''ETC Eligible Orders''—which include ''ETC Orders'' and ''ETC Eligible LOC Orders'' (discussed below)—at the Nasdaq Official Closing Price, as determined by the Closing Cross, unless the System suspends executions in two scenarios. First, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when it detects an order in the security resting on the Nasdaq Continuous Book in After Hours Trading [6] with an After Hours Trading bid (offer) price that is higher (lower) than the Nasdaq Official Closing Price. Second, the System will suspend executions of matched orders in a Nasdaq-listed security in the ETC if and when the last sale price during After Hours Trading, or the best After Hours Trading bid (offer) price, of the security, other than on the Nasdaq Continuous Book, is higher (lower) than the Nasdaq Official Closing Price by the greater of 0.5% or $0.01. The Exchange will cancel any portion of an ETC Eligible Order that remains unexecuted at the conclusion of the ETC, or for which the System has suspended execution, where that suspension remains active as of the conclusion of the ETC. The ETC will not occur for a security on any day when insufficient interest exists in the System to conduct the Closing Cross for that security or when the Exchange invokes contingency procedures due to a disruption that prevents execution of the Closing Cross.

As noted above, two types of orders may participate in the ETC: (1) ETC Eligible Limit-on-Close (''LOC'') Orders; and (2) Extended Trading Close (''ETC'') Orders. As set forth in Rule 4702(b)(12), ETC Eligible LOC Orders are LOC Orders that are eligible to, and by default are designated to participate in the ETC [7] to the extent that such LOC Orders are entered through RASH or FIX and remain unexecuted, in whole or part, in the Closing Cross. An ETC Order, meanwhile, is an order in a Nasdaq-listed security that that is eligible for entry and execution exclusively during the ETC, at the Nasdaq Official Closing Price, as determined by the Closing Cross.

The Exchange now proposes to amend Equity 7, Section 118 to adopt fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC. In short, the Exchange proposes to charge the same fees to execute ETC Eligible Orders as it does to execute ordinary LOC Orders (and Market on Close (''MOC'') Orders) in the Closing Cross.

Equity 7, Section 118(d) governs pricing for orders executed in the Nasdaq Closing Cross. It provides for a system of tiered fees for MOC and LOC Orders executed in the Closing Cross. These tiers are as follows:

Tiers	Volume	Price per executed share
Tier A	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.75% of Consolidated Volume [8] or MOC/LOC volume above 0.50% of Consolidated Volume.	$0.0008 per executed share.
Tier B	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.80% to 1.75% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume.	$0.0011 per executed share.
Tier C	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.50% to 0.80% of Consolidated Volume or MOC/LOC volume above 0.10% to 0.30% of Consolidated Volume.	$0.0012 per executed share.
Tier D	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.30% to 0.50% of Consolidated Volume.	$0.00135 per executed share.
Tier E	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.015% to 0.30% of Consolidated Volume.	$0.00145 per executed share.
Tier F	Shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.00% to 0.015% of Consolidated Volume.	$0.0016 per executed share.
Tier G	member adds Nasdaq Options Market Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.80% or more of national customer volume in multiply-listed equity and ETF options classes in a month.	$0.0010 per executed share.

The Exchange proposes to amend this tier schedule so that its fees also apply to executions of ETC Eligible LOC Orders and ETC Orders in the ETC. For example, if at the end of a month, a member provides liquidity on Nasdaq that represents 1.20% of Consolidated Volume and/or provides MOC or LOC volume in the Nasdaq Closing Cross amounting to 0.40% of Consolidated Volume, then the member would qualify for Tier B pricing of $0.0011 per share executed for both its LOC and MOC Orders executed in the Nasdaq Closing Cross and its ETC Eligible LOC Orders and ETC Orders executed in the ETC.

Under the proposal, shares in ETC Eligible LOC Orders and ETC Orders will not count towards determining a participant's qualification for any of the fee or credit tiers in Section 118(a) or 118(d). Likewise, the Exchange proposes to amend Equity 7, Section 114(a) to

it will execute orders at the close, following a Trading Pause, as set forth in Rule 4120(a), which exists at or after 3:50 p.m. and before 4:00 p.m., as well as the process for executing those orders, as set forth in Rule 4754(b)(6).

[6] For purposes of the ETC, the term ''After Hours Trading'' refers to trading in a Nasdaq-listed security that commences immediately following the conclusion of the Nasdaq Closing Cross or the LULD Closing Cross, during Post-Market Hours, as that term is defined in Equity 1, Section 1(a)(9).

[7] By default, all LOC Orders in Nasdaq-listed securities will be set to participate in the Extended Trading Close in the event that the LOC Orders are not fully executed during the Closing Cross. However, a Participant may opt to exclude its LOC Orders from participating in the Extended Trading Close. When ETC eligibility is disabled, the System will simply cancel LOC Orders in Nasdaq-listed securities that remain unexecuted after the Closing Cross occurs. Also, if Participants select a time-in-force for their LOC Orders in Nasdaq-listed securities that continues after the Closing Cross occurs, then if such LOC Orders remain unexecuted after the Closing Cross, the Exchange will cause the remaining unexecuted shares to bypass the Extended Trading Close and participate in After Hours Trading.

[8] Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity, all M–ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq.

specify that, to the extent that any of the market quality incentive programs described in Section 114 [9] prescribe pricing tiers for which eligibility depends upon a participant achieving certain threshold volumes in LOC or MOC shares, then ETC Eligible LOC Orders and ETC Orders will not count towards such eligibility determinations.

The Exchange's proposal is reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

The Exchange believes it reasonable to adopt the same execution fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC as it charges for ordinary LOC and MOC Orders that execute in the Nasdaq Closing Cross because the ETC will act as an extension of the Closing Cross. That is, ordinary LOC Orders which do not execute fully in the Nasdaq Closing Cross will become eligible automatically for participation in the ETC as an ETC Eligible LOC Order (unless a member opts out of such participation), and if such ETC Eligible LOC Orders execute in the ETC, then they will do so at the Nasdaq Official Closing Price, as determined by the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC in favor of competing on- and off-exchange mechanisms that also allow for participants to execute orders at the Nasdaq Closing Cross price. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

Similarly, the Exchange believes it is reasonable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the

[9] These market quality incentive programs are the Qualified Market Maker Program, the NBBO Program, the Designated Liquidity Provider Program, and the Nasdaq Growth Program.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal will allocate its charges and credits fairly among its market participants.

The Exchange believes that its proposed fees for ETC executions is an equitable allocation. The proposed fees are consistent with those it presently charges for MOC and LOC Orders that execute in the Nasdaq Closing Cross. Given the close relationship between LOC Orders that execute in the Nasdaq Closing Cross, and those that execute in the ETC, the Exchange believes that it is logical for the same fee structure to apply to each of them. The Exchange also believes that this same price structure is appropriate for ETC Orders that execute in the ETC because this structure is simple for participants and properly calibrates incentives to participate in the ETC so that they are neither too high nor too low. The Exchange does not wish for ETC Order execution fees to be too high, lest it will discourage participation in the ETC. The Exchange also does not wish for the fees to be too low, lest it may discourage participation in the Nasdaq Closing Cross.

For similar reasons, it is equitable to exclude ETC Eligible LOC and ETC Orders from determining a participant's qualification for any of the MOC or LOC based fee tiers in Equity 7, Sections 114, 118(a), and 118(d). Again, the Exchange does not wish to provide undue incentives to participate in the ETC that might occur at the expense of participation in the Nasdaq Closing Cross.

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

The Exchange also believes that its proposal is not unfairly discriminatory because the proposed tiered ETC execution fees already apply to members that execute MOC and LOC Orders in the Nasdaq Closing Cross, and thus are familiar and understood. Moreover, the fee tiers are accessible to any Nasdaq member that engages in qualifying activity on Nasdaq or that chooses to grow the extent of that activity to qualify for a more favorable tier.

Again, any participants that are dissatisfied with the proposed fees are free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposed pricing for ETC executions is intended to be consistent with its pricing for LOC and MOC Closing Cross executions due to similarities in the two mechanisms and the desire to properly calibrate incentives to spur member participation in each of them. The Exchange notes that its members are free to trade on other venues, or to not participate in the ETC, to the extent they believe that the proposed fees are not attractive.

Intermarket Competition

In terms of inter-market competition, 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 credits and fees 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 credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing on- and off-exchange venues that also enable participants to execute their orders at the Nasdaq Closing Cross price or to simply opt against participating in the ETC.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members 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 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.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–025. 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–NASDAQ–2022–025 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06092 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94444; File No. SR–GEMX–2022–05]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to Harmonize various processes under Options 3, Section 20 across the affiliated Nasdaq options exchanges.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize its existing processes with those of its affiliate Nasdaq Phlx LLC (''Phlx'') concerning the review of decisions on appeal under Options 3, Section 20. The Exchange also proposes a number of non-substantive changes. Each change is discussed in detail below.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, if a Member affected by a determination under this Rule so requests within the permitted time period, an Exchange Review Council panel will review decisions made by the Official under Options 3, Section 20, including whether an obvious error occurred and whether the correct determination was made. A request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The

Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Furthermore, if the Exchange Review Council panel votes to uphold the decision made under this Rule, the Exchange will assess a fee (''Appeal Fee'') of $5,000 against the Member(s) who initiated the request for appeal.

The Exchange proposes generally to maintain its current appeal process with certain adjustments to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.[3] Similar to Phlx, the Exchange believes that this flexibility will be helpful for Members in submitting their appeal requests in a timely manner, particularly where notification of the Official's decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k)(2).

Second, the Exchange proposes to amend its provisions for when the Exchange Review Council panel must render a decision on requests for appeal by harmonizing to Phlx's process. Specifically, the Exchange proposes in Options 3, Section 20(k)(2) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.[4] The proposed language modifies the current process by extending the current cutoff time from 3:00 to 3:30 p.m. Eastern Time for the Exchange Review Council panel to render a decision on the next trading day, and by accommodating situations where parties properly bring an appeal request on the next trading day.

Third, the Exchange proposes to decrease the Appeal Fee from $5,000 to $500 to align to Phlx's Appeal Fee.[5]

Non-Substantive Changes

In Options 3, Section 20(b)(1), the Exchange proposes a non-substantive, clarifying change to replace the reference to ''opening rotation'' to ''Opening Process,'' and specify that the Opening Process is defined in Options 3, Section 8. The Exchange will also correct a punctuation error in this section.

The Exchange also proposes non-substantive changes to replace references to ''Market Control'' with ''Official'' [6] throughout Options 3, Section 20. At the time of adoption, the term Market Control referred to designated personnel in the Exchange's market control center that were responsible for administering the provisions of the Rule.[7] The Exchange has since updated the terminology for such personnel as Officials,[8] and therefore proposes to update the old references accordingly.[9] The Exchange notes that its affiliated options exchanges similarly reference Officials as the persons responsible for administering their obvious error rules.[10]

Lastly, the Exchange proposes non-substantive, conforming amendments to Options 3, Section 1 (Days and Hours of Business). The Exchange first proposes to amend the title from ''Days and Hours of Business'' to ''Hours of Business.'' The Exchange recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[11] At this time, the Exchange also proposes to amend the first paragraph of Options 3, Section 1 which provides, ''The Board shall determine the days the Exchange shall be open for business (referred to as ''business days'') and the hours of such days during which transactions may be made on the Exchange.'' The Exchange proposes to remove this sentence and instead provide as new paragraph (a):

''The Exchange shall be open for business as provided within General 3, Rule 1030.'' This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. The Exchange also proposes to remove paragraph (e) as holidays are addressed within General 3, Section 1030. The remainder of the paragraphs are proposed to be re-lettered.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange further believes that its proposal to amend the current appeal process to harmonize with Phlx's appeal process is consistent with the Act because it will continue to afford Members with due process in connection with decisions made by Officials under Options 3, Section 20 that the Member may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Members in submitting their appeal requests in a timely manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a

[3] *See* Phlx Options 3, Section 20(l).

[4] *See* Phlx Options 3, Section 20(l) for analogous language.

[5] *See* Phlx Options 3, Section 20(l). The Nasdaq Options Market (''NOM'') and BX Options (''BX'') also have identical $500 Appeal Fees. *See* NOM and BX Options 3, Section 20(k)(4).

[6] For purposes of Options 3, Section 20, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule. *See* Options 3, Section 20(a)(3).

[7] The Exchange's application for registration as a national securities exchange, as approved by the Commission, incorporated this provision. *See* Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013).

[8] *See* Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR–ISEGemini–2015–11).

[9] In particular, the Exchange proposes to update the following subparagraphs in Options 3, Section 20: (c)(2), (d)(2), (g), (h), (i), (l)(1)(A), (l)(1)(B), (l)(1)(C), and (l)(2)(A). The Exchange also proposes to update Supplementary Material .03 to Options 3, Section 20.

[10] *See* BX, NOM, and Phlx Options 3, Section 20.

[11] *See* Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR–NASDAQ–2021–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). The Exchange's General 3 rules incorporate by reference The Nasdaq Stock Market LLC's General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day, and is designed to reduce administrative burden on the Exchange. As it relates to the Appeal Fee, the Exchange believes that the proposed reduction of the fee from $5,000 to $500 is reasonable, equitable and not unfairly discriminatory because it aligns to the Appeal Fee assessed by its affiliates [14] and by other options exchanges,[15] and will be applied uniformly to all Members.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames and the Appeal Fee with those of its affiliates in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Members of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange further believes that the proposed non-substantive changes in Options 3, Section 20 to replace all instances of Market Control with Official, and to replace opening rotation with Opening Process, will add clarity, transparency, and consistency to the Exchange's rules. Lastly, the Exchange's proposal to amend Options 3, Section 1 (Days and Hours of Business) as described above will bring greater clarity, and ensure that this Rule conforms to the changes made in the recent filing to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[16] The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion, and ensuring that market participants and investors can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2022–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2022–05 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06099 Filed 3–22–22; 8:45 am]

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[14] *See supra* note 5.

[15] *See, e.g.,* Cboe BZX Exchange Rule 20.6(l)(5) and MIAX Options Exchange Rule 521(l)(2).

[16] *See supra* note 11.

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94446; File No. SR–BX–2022–004]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize its processes and procedures under Options 3, Section 20 with those of its affiliated options exchange.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize its existing processes for the review of decisions on appeal under Options 3, Section 20 with those of its affiliate Nasdaq Phlx LLC (''Phlx'').

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, a party to a transaction affected by a decision made under this section may appeal that decision to the Exchange Review Council. An appeal must be made in writing, and must be received by the Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed.

The Exchange proposes generally to maintain its current appeal process with certain additions to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.[3] Similar to Phlx, the Exchange believes that this flexibility will be helpful for Participants in submitting their appeal requests in a timely manner, particularly where notification of the Official's decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k).

Second, the Exchange proposes to add a provision for when the Exchange Review Council panel must render a decision on requests for appeal to harmonize to Phlx's process. Specifically, the Exchange proposes in Options 3, Section 20(k) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.[4]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to amend the current appeal process to harmonize with Phlx's appeal process is consistent with the Act because it will continue to afford Participants with due process in connection with decisions made by Officials under Options 3, Section 20 that the Participant may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Participants in submitting their appeal requests in a timely manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day, and is designed to reduce administrative burden on the Exchange.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames with those of its affiliate in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Participants of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Options 3, Section 20(l).

[4] *See* Phlx Options 3, Section 20(l) for analogous language.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

would remove impediments to and perfect the mechanism of a free and open market and a national market system.

For these reasons, the Exchange believes that the proposal is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. As it relates to the proposed changes to the appeal process under Options 3, Section 20(k), the changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2022–004 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–BX–2022–004. 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 (*https://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–BX–2022–004 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06101 Filed 3–22–22; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94453; File No. SR–Phlx–2022–10]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Open Outcry Options Transaction Charges

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).''

The Exchange originally filed the proposed pricing changes on March 1, 2022 (SR–PHLX–2022–09). On March 10, 2022, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Phlx proposes to amend its Pricing Schedule within Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).'' Specifically, Phlx proposes to increase the Lead Market Maker [3] and Market Maker [4] Floor [5] Options Transaction Charges [6] in multiply-listed Penny and non-Penny Symbols and pay a Floor Broker [7] a rebate when these parties are contra each other in certain open outcry transactions.

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding options in SPY.[8] The Exchange currently assesses the following Floor Options Transaction Charges in multiply-listed Penny and non-Penny Symbols: $0.05 per contract for a Professional,[9] $0.35 per contract for a Lead Market Maker and Market Maker, and $0.25 per contract for a Broker-Dealer [10] and Firm.[11] Customers [12] are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.

The Exchange proposes to increase the Floor Lead Market Maker and Floor Market Maker Options Transaction Charges in Penny and non-Penny Symbols from $0.35 to $0.50 per contract and pay a Floor Broker [13] a new $0.15 per contract rebate when a Floor Broker executes an order contra a Floor Lead Marker Maker or Floor Market Maker in open outcry in multiply-listed Penny or non-Penny Symbols. The aforementioned pricing will not apply to singly listed options,[14] index options,[15] FLEX Options,[16] strategy transactions,[17] and Floor Qualified Contingent Cross Orders.[18]

The Exchange believes that assessing a Floor Lead Market Maker and a Floor Market Maker an increased fee of $0.15 per contract (increase from $0.35 to $0.50 per contract) and paying a Floor Broker a rebate of $0.15 per contract will incentivize Floor Brokers to attract a greater number of orders to Phlx's Trading Floor and allow Floor Lead Market Makers and Floor Market Makers to interact with those orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

[3] The term ''Floor Lead Market Maker'' is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's Trading Floor. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[4] The term ''Floor Market Maker'' is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

The term ''Streaming Quote Trader'' or ''SQT'' is defined in Options 1, Section 1(b)(54) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. See Phlx's Pricing Schedule at Options 7, Section 1(c). The term ''Remote Streaming Quote Trader'' or ''RSQT'' is defined in Options 1, Section 1(b)(49) as a Market Maker that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or ''RSQTO,'' which may also be referred to as a Remote Market Making Organization (''RMO''), is a member organization in good standing that satisfies the RSQTO readiness requirements in Options 2, Section 1(a). See Phlx's Pricing Schedule at Options 7, Section 1(c).

[5] The term ''floor transaction'' is a transaction that is effected in open outcry on the Exchange's Trading Floor. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[6] Floor transaction fees apply to any ''as of'' or ''reversal'' adjustments for manually processed trades originally submitted electronically or through FBMS. *See* Phlx's Pricing Schedule at Options 7, Section 4, footnote 8.

The Floor Based Management System or ''FBMS'' is an order management system and the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange's Options Floor. Floor Brokers contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker to FBMS, which creates an electronic audit trail. The execution of orders to Phlx's electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

[7] The term ''Floor Broker'' means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[8] Transactions in SPY originating on the Exchange floor will be subject to the Multiply Listed Options Fees (see Multiply Listed Options Fees in Options 7, Section 4). However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. The one side of the transaction which originates on the Exchange floor will count toward the volume which qualifies a participant for the Simple Order Rebate for Adding Liquidity for Lead Market Makers and Market Makers in SPY. *See* Options 7, Section 3, Part C.

[9] The term ''Professional'' applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[10] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[11] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation (''OCC''). *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[12] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at OCC which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(b)(45)). *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[13] Today, Floor Brokers are not assessed any Options Transaction Charges.

[14] Singly Listed Options are subject to pricing within Options 7, Section 5C.

[15] Index Options are subject to pricing within Options 7, Section 5A, and B. Today, Options Transaction Charges in non-Penny Options exclude NDX, NDXP and XND.

[16] FLEX Options are subject to pricing within Options 7, Section 6B.

[17] Strategy transactions include dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies as described within Options 7, Section 4.

[18] Floor Qualified Contingent Cross (''QCC'') Orders, as described within Options 8, Section 30(e), are subject to pricing noted within Options 7, Section 4. Floor QCC Orders do not qualify as floor transactions as they are not executed in open outcry.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [22] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[23] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [24]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [25] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to increase the Floor Lead Market Maker and the Floor Market Maker Options Transaction Charges in multiply-listed Penny and non-Penny Symbols from $0.35 to $0.50 per contract and pay a Floor Broker a new $0.15 per contract rebate when a Floor Broker executes an order contra a Floor Lead Marker Maker or a Floor Market Maker in open outcry in multiply-listed Penny or non-Penny Symbols is reasonable. The Exchange desires to offer a $0.15 per contract rebate to the executing Floor Broker to attract additional order flow to the Phlx Trading Floor. A similar flat rebate is offered to Floor Brokers on BOX Exchange LLC (''BOX'').[26] The proposed rebate would be directed to the Floor Broker and not to the Floor Lead Market Maker or the Floor Market Maker who is assessed an Options Transaction Charge. In other words, the rebate is paid to the Floor Broker who executed the order in open outcry contra the Floor Lead Market Maker or the Floor Market Maker. The rebate would be paid from revenues obtained by assessing Floor Lead Market Makers and Floor Market Makers the proposed $0.50 per contract Options Transaction Charge instead of the current $0.35 per contract Options Transaction Charge.[27] The Exchange believes it is reasonable to only apply the rebate to Floor Brokers and not to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers only represent their own interest on the Trading Floor and therefore do not need a similar incentive. Unlike Floor Lead Market Makers and Floor Market Makers, Floor Brokers act as agents in representing orders on the Exchange's Trading Floor. Participants who desire to have an order executed on Phlx's Trading Floor would provide that order to a Floor Broker to be represented on the Trading Floor. Floor Lead Market Makers and Floor Market Makers may interact with orders represented by the Floor Broker in open outcry on the Trading Floor. Finally, Floor Lead Market Makers and Floor Market Makers may choose to conduct their business on a Trading Floor or in an electronic market, unlike Floor Brokers, who have a business model that is naturally tied to the physical trading space. While this proposal increases the Floor Options Transaction Charges for Floor Lead Market Makers and Floor Market Makers in open outcry in multiply-listed Penny or non-Penny Symbols when a Floor Broker executes an order contra a Floor Lead Market Maker or a Floor Market Maker, the Exchange believes that the ability to attract a greater amount of order flow on the Exchange's Trading Floor will allow Floor Lead Market Makers and Floor Market Makers to participate in a greater number of open outcry transactions.

Today, market participants may send order flow to the Trading Floor by either investing in technology, systems and personnel to participate on the Trading Floor, or utilizing the services of a Floor Broker. Offering the proposed rebate to Floor Brokers will allow Floor Brokers to price their services at a level that would enable them to attract additional order flow to the Exchange. To the extent Floor Brokers are able to attract additional orders; they will gain important information that would allow them to solicit future orders for participation in other trades. This will in turn, benefit other Exchange participants through additional liquidity on the Trading Floor with which they may interact. Finally, the Exchange believes that the rebate will promote competition by allowing Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges.

The Exchange's proposal to increase the Floor Lead Market Maker and the Floor Market Maker Options Transaction Charges in multiply-listed Penny and non-Penny Symbols from $0.35 to $0.50 per contract and pay a Floor Broker a new $0.15 per contract rebate when a Floor Broker executes an order contra a Floor Lead Marker Maker or a Floor Market Maker in open outcry in multiply-listed Penny or non-Penny Symbols is equitable and not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to only apply the rebate to Floor Brokers and not to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers only represent their own interest on the Trading Floor and therefore do not need a similar incentive. Unlike Floor Lead Market Makers and Floor Market Makers, Floor Brokers act as agents in representing orders on the Exchange's Trading Floor. They serve a valuable function in open outcry in allowing market participants to have their orders represented in this venue without the need to be a member of the Exchange.[28] Further, Floor Lead Market Makers and Floor Market Makers benefit from having access to interact with orders that are made available in open outcry on the Trading Floor. Floor Lead Market Makers and Floor Market Makers may choose to conduct their business on a Trading Floor or in an electronic market, unlike Floor Brokers, who have a business model that is naturally tied to the physical trading space. The Exchange believes that it is equitable and not unfairly discriminatory to assess Floor Lead Market Makers and Floor Market Makers a higher Options Transaction Charge because they have the benefit of trading

[22] NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

[23] *See* NetCoalition, at 534–535.

[24] *Id.* at 537.

[25] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

[26] Today, BOX pays Floor Brokers a $0.075 per contract rebate for all Broker Dealer and Market Maker QOO Orders presented on the Trading Floor and a $0.05 per contract rebate for all Professional Customer QOO Orders presented on the Trading Floor. Unlike BOX who pays a $0.05 per contract rebate for both sides of the QOO Order, the Exchange would pay a Floor Broker a rebate of $0.15 per contract for orders in open outcry contra Floor Lead Market Makers and Floor Market Makers in multiply-listed Penny and non-Penny Symbols. *See* BOX's Fee Schedule at Section III. BOX's rebate does not apply to Public Customer executions, executions subject to the Strategy QOO Order Fee Cap, or Broker Dealer executions where the Broker Dealer is facilitating a Public Customer. *See* BOX's Fee Schedule at Section II.

[27] BOX assesses its Market Makers a manual transaction fee of $0.35 per contract in Penny and Non-Penny Interval Classes. *See* BOX's Fee Schedule at Section II.

[28] Participants who desire to have an order executed on Phlx's Trading Floor would provide that order to a Floor Broker to be represented on the Trading Floor.

on the Trading Floor or in an electronic venue if they so choose. The proposed $0.50 Options Transaction Charge for Floor Lead Market Makers and Floor Market Makers and the $0.15 per contract rebate for Floor Brokers will be uniformly assessed and paid, respectively, to all Floor Lead Market Makers, Floor Market Makers, and Floor Brokers participating in open outcry trades in multiply-listed Penny and non-Penny symbols.

The Exchange believes that its proposal to not pay a rebate when an order is executed electronically or for orders that are singly listed options, index options, FLEX Options, strategy transactions, and Floor QCC Orders is reasonable, equitable and not unfairly discriminatory as pricing for these types of transactions are specified separately from Floor Options Transaction Charges within Options 7, Section 4 of the Pricing Schedule.

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.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees 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.

Moreover, the proposal is designed to encourage Floor Brokers to attract a greater amount of order flow to Phlx's Trading Floor. To the extent that the proposed change attracts additional order flow to Phlx's Trading Floor, this increased order flow would continue to make the Exchange a more competitive venue for order execution.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

The Exchange's proposal to increase the Floor Lead Market Maker and the Floor Market Maker Options Transaction Charges in multiply-listed Penny and non-Penny Symbols from $0.35 to $0.50 per contract and pay a Floor Broker a new $0.15 per contract rebate when a Floor Broker executes an order contra a Floor Lead Marker Maker or a Floor Market Maker in open outcry in multiply-listed Penny or non-Penny Symbols does not impose an undue burden on competition. Only applying a rebate to Floor Brokers and not to Floor Lead Market Makers and Floor Market Makers does not impose an undue burden on competition because Floor Lead Market Makers and Floor Market Makers only represent their own interest on the Trading Floor and therefore do not need a similar incentive. Unlike Floor Lead Market Makers and Floor Market Makers, Floor Brokers act as agents in representing orders on the Exchange's Trading Floor. They serve a valuable function in open outcry in allowing market participants to have their orders represented in this venue without the need to be a member of the Exchange. Further, Floor Lead Market Makers and Floor Market Makers benefit from having access to interact with orders that are made available in open outcry on the Trading Floor. Floor Lead Market Makers and Floor Market Makers may choose to conduct their business on the Trading Floor or in an electronic market, unlike Floor Brokers, who have a business model that is naturally tied to the physical trading space. The Exchange believes that assessing Floor Lead Market Makers and Floor Market Makers a higher Options Transaction Charge does not impose an undue burden on competition because they have the benefit of trading on a Trading Floor or in an electronic venue if they so choose. The proposed $0.50 Options Transaction Charge for Floor Lead Market Makers and Floor Market Makers and the $0.15 per contract rebate for Floor Brokers will be uniformly assessed and paid, respectively, to all Floor Lead Market Makers, Floor Market Makers, and Floor Brokers participating in open outcry trades in multiply-listed Penny and non-Penny symbols.

The Exchange believes that its proposal to not pay a rebate when an order is executed electronically or for orders that are singly listed options, index options, FLEX Options, strategy transactions, and Floor QCC Orders does not impose an undue burden on competition as pricing for these types of transactions are specified separately from Floor Options Transaction Charges within Options 7, Section 4 of the Pricing Schedule.

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.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–10 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06094 Filed 3–22–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94443; File No. SR–MRX–2022–03]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize various processes under Options 3, Section 20 across the affiliated Nasdaq options exchanges.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize its existing processes with those of its affiliate Nasdaq Phlx LLC (''Phlx'') concerning the review of decisions on appeal under Options 3, Section 20. The Exchange also proposes a number of non-substantive changes. Each change is discussed in detail below.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, if a Member affected by a determination under this Rule so requests within the permitted time period, an Exchange Review Council panel will review decisions made by the Official under Options 3, Section 20, including whether an obvious error occurred and whether the correct determination was made. A request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Furthermore, if the Exchange Review Council panel votes to uphold the decision made under this Rule, the Exchange will assess a fee (''Appeal Fee'') of $5,000 against the Member(s) who initiated the request for appeal.

The Exchange proposes generally to maintain its current appeal process with certain adjustments to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.[3] Similar to Phlx, the Exchange believes that this flexibility will be helpful for Members in submitting their appeal requests in a timely manner, particularly where notification of the Official's decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k)(2).

Second, the Exchange proposes to amend its provisions for when the Exchange Review Council panel must render a decision on requests for appeal by harmonizing to Phlx's process. Specifically, the Exchange proposes in Options 3, Section 20(k)(2) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.[4] The proposed language modifies the current process by extending the current cutoff time from 3:00 to 3:30 p.m. Eastern Time for the Exchange Review Council panel to render a decision on the next trading day, and by

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Options 3, Section 20(l).

[4] *See* Phlx Options 3, Section 20(l) for analogous language.

accommodating situations where parties properly bring an appeal request on the next trading day.

Third, the Exchange proposes to decrease the Appeal Fee from $5,000 to $500 to align to Phlx's Appeal Fee.[5]

Non-Substantive Changes

In Options 3, Section 20(b)(1), the Exchange proposes a non-substantive, clarifying change to replace the reference to ''opening rotation'' to ''Opening Process,'' and specify that the Opening Process is defined in Options 3, Section 8. The Exchange will also correct a punctuation error in this section.

The Exchange also proposes non-substantive changes to replace references to ''Market Control'' with ''Official'' [6] throughout Options 3, Section 20. At the time of adoption, the Exchange copied Options 3, Section 20 verbatim from its affiliate, Nasdaq ISE, LLC (''ISE'').[7] When ISE first adopted this rule, the term Market Control referred to designated personnel in ISE's market control center that were responsible for administering the provisions of the Rule.[8] ISE has since updated the terminology for such personnel as Officials,[9] and the Exchange therefore proposes to update the old references accordingly.[10] The Exchange notes that its affiliated options exchanges similarly reference Officials as the persons responsible for administering their obvious error rules.[11]

Lastly, the Exchange proposes non-substantive, conforming amendments to Options 3, Section 1 (Days and Hours of Business). The Exchange first proposes to amend the title from ''Days and Hours of Business'' to ''Hours of Business.'' The Exchange recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[12] At this time, the Exchange also proposes to amend the first paragraph of Options 3, Section 1 which provides, ''The Board shall determine the days the Exchange shall be open for business (referred to as ''business days'') and the hours of such days during which transactions may be made on the Exchange.'' The Exchange proposes to remove this sentence and instead provide as new paragraph (a):

''The Exchange shall be open for business as provided within General 3, Rule 1030.'' This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. The Exchange also proposes to remove paragraph (e) as holidays are addressed within General 3, Section 1030. The remainder of the paragraphs are proposed to be re-lettered.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange further believes that its proposal to amend the current appeal process to harmonize with Phlx's appeal process is consistent with the Act because it will continue to afford Members with due process in connection with decisions made by Officials under Options 3, Section 20 that the Member may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Members in submitting their appeal requests in a timely manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day, and is designed to reduce administrative burden on the Exchange. As it relates to the Appeal Fee, the Exchange believes that the proposed reduction of the fee from $5,000 to $500 is reasonable, equitable and not unfairly discriminatory because it aligns to the Appeal Fee assessed by its affiliates [15] and by other options exchanges,[16] and will be applied uniformly to all Members.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames and the Appeal Fee with those of its affiliates in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Members of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange further believes that the proposed non-substantive changes in Options 3, Section 20 to replace all instances of Market Control with Official, and to replace opening rotation with Opening Process, will add clarity, transparency, and consistency to the Exchange's rules. Lastly, the Exchange's proposal to amend Options 3, Section 1 (Days and Hours of Business) as described above will bring greater clarity, and ensure that this Rule conforms to the changes made in the recent filing to establish General 3,

[5] *See* Phlx Options 3, Section 20(l). The Nasdaq Options Market (''NOM'') and BX Options (''BX'') also have identical $500 Appeal Fees. *See* NOM and BX Options 3, Section 20(k)(4).

[6] For purposes of Options 3, Section 20, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule. *See* Options 3, Section 20(a)(3).

[7] The Exchange's application for registration as a national securities exchange, as approved by the Commission, incorporated this provision. *See* Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016).

[8] *See* Securities Exchange Act Release No. 44376 (June 1, 2001), 66 FR 30772 (June 7, 2001) (SR–ISE–00–19).

[9] *See* Securities Exchange Act Release No. 74896 (May 7, 2015), 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18).

[10] In particular, the Exchange proposes to update the following subparagraphs in Options 3, Section 20: (c)(2), (d)(2), (g), (h), (i), (l)(1)(A), (l)(1)(B), (l)(1)(C), and (l)(2)(A). The Exchange also proposes to update Supplementary Material .03 to Options 3, Section 20.

[11] *See* BX, NOM, and Phlx Options 3, Section 20.

[12] *See* Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR–NASDAQ–2021–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). The Exchange's General 3 rules incorporate by reference The Nasdaq Stock Market LLC's General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 5.

[16] *See, e.g.,* Cboe BZX Exchange Rule 20.6(l)(5) and MIAX Options Exchange Rule 521(l)(2).

Section 1030, which governs the days the Exchange will be open for business.[17] The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion, and ensuring that market participants and investors can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–03 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 Number SR–MRX–2022–03. 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 Number SR–MRX–2022–03 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06098 Filed 3–22–22; 8:45 am]

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[17] *See supra* note 12.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94449; File No. SR–MEMX–2022–04]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to the Market Wide Circuit Breaker Until April 18, 2022

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to extend the pilot related to the market-wide circuit breaker in Rule 11.16 to the close of business on April 18, 2022. The text of the proposed rule change is provided in Exhibit 5.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 11.16 to the close of business on April 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, which for the Exchange are contained in Exchange Rule 11.16, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 11.16 (a)–(d)).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In conjunction with the proposal to make the LULD Plan permanent, all U.S. cash equity exchanges and FINRA filed to to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2019.[10] On May 4, 2020, the Commission approved MEMX's Form 1 Application to register as a national securities exchange with rules including, on a pilot basis expiring on October 18, 2020, the Pilot Rules.[11] The Exchange subsequently amended Rule 11.16 to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2021,[12] and once again to extend effectiveness until March 18, 2022.[13]

The Exchange now proposes to amend Rule 11.16 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 11.16.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[14]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See, e.g.,* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR–NYSE–2013–10).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See, e.g.,* Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR–NYSE–2019–19).

[11] *See* Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[12] *See* Securities Exchange Act Release No. 90159 (October 13, 2020), 85 FR 66373 (October 19, 2020) (SR–MEMX–2020–12).

[13] *See* Securities Exchange Act Release No. 93362 (October 15, 2021), 86 FR 58364 (October 21, 2021) (SR–MEMX–2021–14).

[14] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings//2020/9/20-392_1.pdf*; *https://www.cmegroup.com/content/dam/cmegroup//market-regulation/rule-filings/2020/9/20-392_2.pdf.*

built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[15] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[16]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[18] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule changes.[19] The Exchange now proposes to extend the expiration date of the Pilot Rules one month from the current expiration date, to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 11.16 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges have already filed or will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6)(iii) thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6)[26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse//Report_of_the_Market-Wide_Circuit_/Breaker_Working_Group.pdf.*

[16] *See id.* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[19] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[28]

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) [29] 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–MEMX–2022–04 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–MEMX–2022–04. 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–MEMX–2022–04 and should be submitted on or before April 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06090 Filed 3–22–22; 8:45 am]

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[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–441, OMB Control No. 3235–0497]

Submission for OMB Review; 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:
Rule 15c3–4

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–4 (17 CFR. 240.15c3–4) (the ''Rule'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c3–4 requires certain broker-dealers that are registered with the Commission as OTC derivatives dealers, or who compute their net capital charges under Appendix E to Rule 15c3–1 (17 CFR 240.15c3–1) (''ANC firms''), to establish, document, and maintain a system of internal risk management controls. In addition, security-based swap dealers (''SBSDs'') that are subject to Rule 18a–1 (17 CFR 240.18a–1) must comply with Rule 15c3–4 as if they were OTC derivatives dealers. The Rule sets forth the basic elements for an OTC derivatives dealer, an ANC firm, or an SBSD to consider and include when establishing, documenting, and reviewing its internal risk management control system, which is designed to, among other things, ensure the integrity of an OTC derivatives dealer's, an ANC firm's or an SBSD's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the firm's activities and level of risk. The Rule also requires that management of an OTC derivatives dealer, an ANC firm, or an SBSD must periodically review, in accordance with written procedures, the firm's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time a new firm subject to Rule 15c3–4 will spend establishing and documenting its risk management control system is approximately 2,000 hours (666.666667 hours per year when annualized over three years) and that, on average, an existing firm subject to Rule 15c3–4 will spend approximately 200 hours each year to maintain (*e.g.,* reviewing and updating) its risk management control system. Currently, five firms are registered with the Commission as OTC derivatives dealers, five as ANC firms, and one as an SBSD. The staff estimates that approximately two new additional entities may register as OTC derivatives dealers, one new entity may register as an ANC firm, and two new entities may register as SBSDs subject to the requirements of Rule 15c3–4 within the next three years. Thus, the estimated annual burden would be 2,200 hours for the eleven existing firms (five OTC derivatives dealers, five ANC firms, and one SBSD) currently required to comply with Rule 15c3–4 to maintain their risk management control systems,[1] 3,333 hours for the five new firms (two new OTC derivatives dealers, one new ANC firm, and two new SBSDs) to establish and document their risk management control systems,[2] and 1,000 hours for the five new firms (two new OTC derivatives dealers, one new ANC firm, and two new SBSDs) to maintain their risk management control systems.[3] Accordingly, the staff estimates the total

[1] (200 hours × 11 firms) = 2200.

[2] ((2,000 hours/3 years) × 5 firms) = 3,333.

[3] (200 hours × 5 firms) = 1000.

annual burden associated with Rule 15c3–4 for the 16 respondents (nine OTC derivatives dealers, six ANC firms, and five SBSDs) will be approximately 6,533 hours per year.

The records required to be made pursuant to the Rule and the results of the periodic reviews conducted under paragraph (d) of Rule 15c3–4 must be preserved under Rule 17a–4 of the Exchange Act (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an easily accessible place. The Commission will not generally publish or make available to any person notices or reports received pursuant to the Rule. The statutory basis for the Commission's refusal to disclose such information to the public is the exemption contained in section (b)(4) of the Freedom of Information Act (5 U.S.C. 552), which essentially provides that the requirement of public dissemination does not apply to commercial or financial information which is privileged or confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: March 18, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06151 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94457; File No. SR–NYSE–2021–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rules 7.31, 7.35, 7.35B, 7.35C, 98, and 104 Relating to the Closing Auction

March 17, 2022.

On September 3, 2021, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction. The proposed rule change was published for comment in the **Federal Register** on September 22, 2021.[3] On November 1, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to December 21, 2021.[5] The Commission has received two comment letters on the proposal.[6] On December 17, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 22, 2021.[10] The 180th day after publication of the proposed rule change is March 21, 2022.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates May 20, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File Number SR–NYSE–2021–44).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06105 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93037 (Sept. 16, 2021), 86 FR 52719 (Sept. 22, 2021) (SR–NYSE–2021–44) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93488 (Nov. 1, 2021), 86 FR 61352 (Nov. 5, 2021).

[6] *See* Anonymous Letter (Sept. 27, 2021); Letter to J. Matthew DeLesDernier, Assistant Secretary, Commission, from Richard Grant, General Counsel, GTS Securities, LLC (Mar. 16, 2022).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 93809 (Dec. 17, 2021), 86 FR 73060 (Dec. 23, 2021).

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Notice, *supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94445; File No. SR–ISE–2022–08]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

March 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exhibit I Caption—Harmonize various processes under Options 3, Section 20 across the affiliated Nasdaq options exchanges.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize its existing processes with those of its affiliate Nasdaq Phlx LLC (''Phlx'') concerning the review of decisions on appeal under Options 3, Section 20. The Exchange also proposes a number of non-substantive changes. Each change is discussed in detail below.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, if a Member affected by a determination under this Rule so requests within the permitted time period, an Exchange Review Council panel will review decisions made by the Official under Options 3, Section 20, including whether an obvious error occurred and whether the correct determination was made. A request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Furthermore, if the Exchange Review Council panel votes to uphold the decision made under this Rule, the Exchange will assess a fee (''Appeal Fee'') of $5,000 against the Member(s) who initiated the request for appeal.

The Exchange proposes generally to maintain its current appeal process with certain adjustments to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.[3] Similar to Phlx, the Exchange believes that this flexibility will be helpful for Members in submitting their appeal requests in a timely manner, particularly where notification of the Official's decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k)(2).

Second, the Exchange proposes to amend its provisions for when the Exchange Review Council panel must render a decision on requests for appeal by harmonizing to Phlx's process. Specifically, the Exchange proposes in Options 3, Section 20(k)(2) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.[4] The proposed language modifies the current process by extending the current cutoff time from 3:00 to 3:30 p.m. Eastern Time for the Exchange Review Council panel to render a decision on the next trading day, and by accommodating situations where parties properly bring an appeal request on the next trading day.

Third, the Exchange proposes to decrease the Appeal Fee from $5,000 to $500 to align to Phlx's Appeal Fee.[5]

Non-Substantive Changes

In Options 3, Section 20(b)(1), the Exchange proposes a non-substantive, clarifying change to replace the reference to ''opening rotation'' to ''Opening Process,'' and specify that the Opening Process is defined in Options 3, Section 8. The Exchange also proposes non-substantive changes to replace references to ''Market Control'' with ''Official'' [6] throughout Options 3, Section 20. At the time of adoption, the term Market Control referred to designated personnel in the Exchange's market control center that were responsible for administering the provisions of the Rule.[7] The Exchange has since updated the terminology for such personnel as Officials,[8] and therefore proposes to update the old references accordingly.[9] The Exchange notes that its affiliated options exchanges similarly reference Officials as the persons responsible for administering their obvious error rules.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and because it is not designed to permit

[3] *See* Phlx Options 3, Section 20(l).

[4] *See* Phlx Options 3, Section 20(l) for analogous language.

[5] *See* Phlx Options 3, Section 20(l). The Nasdaq Options Market (''NOM'') and BX Options (''BX'') also have identical $500 Appeal Fees. *See* NOM and BX Options 3, Section 20(k)(4).

[6] For purposes of Options 3, Section 20, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule. *See* Options 3, Section 20(a)(3).

[7] *See* Securities Exchange Act Release No. 44376 (June 1, 2001), 66 FR 30772 (June 7, 2001) (SR–ISE–00–19).

[8] *See* Securities Exchange Act Release No. 74896 (May 7, 2015), 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18).

[9] In particular, the Exchange proposes to update the following subparagraphs in Options 3, Section 20: (c)(2), (d)(2), (g), (h), (i), (l)(1)(A), (l)(1)(B), (l)(1)(C), and (l)(2)(A). The Exchange also proposes to update Supplementary Material .03 to Options 3, Section 20.

[10] *See* BX, NOM, and Phlx Options 3, Section 20.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange further believes that its proposal to amend the current appeal process to harmonize with Phlx's appeal process is consistent with the Act because it will continue to afford Members with due process in connection with decisions made by Officials under Options 3, Section 20 that the Member may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Members in submitting their appeal requests in a timely manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day, and is designed to reduce administrative burden on the Exchange. As it relates to the Appeal Fee, the Exchange believes that the proposed reduction of the fee from $5,000 to $500 is reasonable, equitable and not unfairly discriminatory because it aligns to the Appeal Fee assessed by its affiliates [13] and by other options exchanges,[14] and will be applied uniformly to all Members.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames and the Appeal Fee with those of its affiliates in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Members of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Lastly, the Exchange believes that the proposed non-substantive changes to replace all instances of Market Control with Official, and to replace opening rotation with Opening Process, will add clarity, transparency, and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion, and ensuring that market participants and investors can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2022–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2022–08 and should be submitted on or before April 13, 2022.

[13] *See supra* note 5.

[14] *See, e.g.,* Cboe BZX Exchange Rule 20.6(l)(5) and MIAX Options Exchange Rule 521(l)(2).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06100 Filed 3–22–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11688]

Privacy Act of 1974; System of Records

ACTION: Notice of a modified system of records.

SUMMARY: The information in this system of records, Risk Analysis and Management Records, supports the vetting of directors, officers, or other employees of organizations who apply for Department of State contracts, grants, cooperative agreements, or other funding; and individuals who may benefit from such funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that Department funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice is effective upon publication, with the exception of the routine uses (a), (b), (c), (d), and (e) that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by April 22, 2022.

ADDRESSES: Questions can be submitted by mail, email, or by calling Eric F. Stein, the Senior Agency Official for Privacy on (202) 485–2051. If mail, please write to: U.S Department of State; Office of Global Information Systems, A/GIS; Room 1417, 2201 C St. NW, Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, Eric F. Stein, at *Privacy@state.gov.* Please write ''Risk Analysis and Management Records, State–78'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Eric F. Stein, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 1417, 2201 C St. NW, Washington, DC 20520 or by calling on (202) 485–2051.

SUPPLEMENTARY INFORMATION: This notice is being modified to reflect new OMB guidance, changes to the categories of records and security classification. The modified system of records notice includes substantive revisions and additions to the following sections: Dates, Security Classification, System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Routine Uses of Records, Retention and Disposal of Records, and Exemptions Promulgated. In addition, the Department is taking this opportunity to make minor administrative updates to the following sections: Addresses, For Further Information Contact, and History.

SYSTEM NAME AND NUMBER:

Risk Analysis and Management Records, State–78.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Risk Analysis and Management (RAM), Department of State, Washington, DC, 2201 C St. NW, Washington, DC 20520.

SYSTEM MANAGER(S):

Director, Office of Risk Analysis and Management (RAM) 2201 C St. NW, Washington, DC 20520, *RAM@state.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 2339A, 2339B, 2339C; 22 U.S.C. 2151 *et seq.;* E.O. 13224, 13099 and 12947; and Homeland Security Presidential Directive–6.

PURPOSE(S) OF THE SYSTEM:

The information in the system supports the vetting of directors, officers, or other employees of organizations who apply for Department of State contracts, grants, cooperative agreements, or other funding; and individuals who may benefit from such funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that Department funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers key personnel of organizations that have applied for contracts, grants, cooperative agreements, or other funding from the Department of State; and individuals who may benefit from such funding. These individuals may include but are not limited to principal officers or directors, program managers, chief of party for the program and other individuals employed by the organization. The Privacy Act defines an individual at 5 U.S.C. 552a(a)(2) as a United States citizen or lawful permanent resident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes: Name, aliases, date and place of birth, gender (as shown in a government-issued foreign or U.S. photo ID), citizenship(s), government-issued identification information (including but not limited to Social Security number if U.S. citizen or Legal Permanent Resident, passport number, or any other numbers originated by a government that specifically identifies an individual), mailing address, telephone numbers, email, social media information, current employer organizational and project title.

RECORD SOURCE CATEGORIES:

Information is collected from the record subjects themselves and also from public sources, agencies conducting national security screening, law enforcement and intelligence agency records, and other government databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Risk Analysis and Management Records may be disclosed:

(a.) To appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(b.) To another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or

[17] 17 CFR 200.30–3(a)(12).

national security, resulting from a suspected or confirmed breach.

(c.) To other U.S. government agencies for vetting programs.

(d.) To the Federal Bureau of Investigation, the Department of Homeland Security, the National Counter-Terrorism Center (NCTC), the Terrorist Screening Center (TSC), or other appropriate federal agencies, for the integration and use of such information to protect against terrorism, if that record is about one or more individuals known, or suspected, to be or to have been involved in activities constituting, in preparation for, in aid of, or related to terrorism. Such information may be further disseminated by recipient agencies to Federal, State, local, territorial, tribal, and foreign government authorities, and to support private sector processes as contemplated in Homeland Security Presidential Directive/HSPD–6 and other relevant laws and directives, for terrorist screening, threat-protection, and other homeland security purposes.

(e.) To a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to many of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Risk Analysis and Management Records, State–78.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found at *https://fam.state.gov/FAM/05FAM/05FAM0440.html.* All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, date and place of birth, government identifying numbers (such as Social Security numbers or passport numbers), or other identifying data specified under Categories of Records in the system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records with no derogatory findings are purged annually; records with derogatory information are maintained for seven years. Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA) and outlined at *https://foia.state.gov/Learn/RecordsDisposition.aspx.* More specific information may be obtained by writing to the following address: U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All Department of State network users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified (SBU) information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Department OpenNet network users are required to take, on a biennial basis, the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Risk Analysis and Management Records, a user must first be granted access to the Department of State computer network.

Department of State employees and contractors may remotely access this system of records using non-Department-owned information technology. Such access is subject to approval by the Department's mobile and remote access program and is limited to information maintained in unclassified information systems. Remote access to the Department's information systems is configured in compliance with OMB Circular A–130 multifactor authentication requirements and includes a time-out function.

All Department of State employees and contractors with authorized access to records maintained in this system of records have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or to amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520. The individual must specify that he or she wishes the Risk Analysis and Management Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Risk Analysis and Management Records include records pertaining to the individual. Detailed instructions on Department of State procedures for accessing and amending records can be found at the Department's FOIA website located at *https://foia.state.gov/Request/Guide.aspx.*

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest a record should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to themselves may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520. The individual must specify that he or she wishes the Risk Analysis and Management Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address

and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Risk Analysis and Management Records include records pertaining to the individual.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

To the extent applicable, because this system contains information related to the government's national security programs, records in this system may be exempt from any part of 5 U.S.C. 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6),(7), (9), (10), and (11) if the records in the system are subject to the exemption found in 5 U.S.C. 552a(j). To the extent applicable, records in this system may be exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a if the records in the system are subject to the exemption found in 5 U.S.C. 552a(k). Any other exempt records from other systems of records that are recompiled into this system are also considered exempt to the extent they are claimed as such in the original systems.

HISTORY:

Previously published at 76 FR 76215.

Eric F. Stein,

Deputy Assistant Secretary, Bureau of Administration, Global Information Services, US Department of State.

[FR Doc. 2022–06117 Filed 3–22–22; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 11687]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Philip Guston Now'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Philip Guston Now'' at the Museum of Fine Arts, Boston, in Boston, Massachusetts; the Museum of Fine Arts, Houston, in Houston, Texas; the National Gallery of Art, Washington, District of Columbia; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–06153 Filed 3–22–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0012]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 12 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on March 8, 2022. The exemptions expire on March 8, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov,* insert the docket number, FMCSA–2022–0012, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. 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, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On February 3, 2022, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (87 FR 6229). The public comment period ended on March 7, 2022, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40

(Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received two comments in this proceeding. The Minnesota Department of Public Safety submitted a comment in support of the decision to issue an exemption to Eugene F. Napieralski. Amy Marshall submitted a comment regarding two individuals who are not listed in this notice.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 3, 2022, **Federal Register** notice (87 FR 6229) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 12 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, complete vision loss, corneal opacity, corneal scarring, optic atrophy, and retinal detachment. In most cases, their eye conditions did not develop recently. Eight of the applicants were either born with their vision impairments or have had them since childhood. The four individuals that developed their vision conditions as adults have had them for a range of 6 to 42 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 4 to 41 years. In the past 3 years, one driver was involved in a crash, and two drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Jacob A. Bigelow (WI)

William H. Brown (OR)

Ronald L. Butler (GA)

Stephen Butts (MO)

Daniel J. Clark (GA)

Kamaljit S. Dhillon (OH)

Michael P. Gross (UT)

James Mize (TN)

Eugene F. Napieralski (MN)

Gerard L. Pagan (NC)

Sheryl J. Simpson (TX)

Willie J. Smith (TX)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–06119 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0159]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny the applications from five individuals treated with an ICD who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0159, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On November 12, 2021, FMCSA published a **Federal Register** notice (86 FR 62868) announcing receipt of applications from five individuals treated with ICDs and requested comments from the public. The individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on December 13, 2021, and one comment was received.

FMCSA has evaluated the eligibility of the applicants and concluded that granting an exemption would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the November 12, 2021, **Federal Register** notice and will not be repeated here.

The Agency's decision regarding this exemption application is based on information from the Cardiovascular Medical Advisory Criteria, an April 2007 evidence report titled ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,'' [1] and a December 2014 focused research report titled ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of these reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.[2] The advisory criteria for § 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. ICDs are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The commenter supported granting exemptions to the applicants stipulating a 6-month cardiology review and a 6-month medical certification period as safety assurances.

FMCSA acknowledges that while a more frequent cardiology review and physical qualification period may be feasible for some of the applicants, others may find a more frequent medical review period burdensome and costly. In addition, there continues to be a risk for arrhythmias, and inherent complications such as inappropriate discharges, and ICD malfunction which could pose a risk to the individual and the public while driving a CMV.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

The Agency's decision regarding these exemption applications is based on an individualized assessment of the applicants' medical information, available medical and scientific data concerning ICDs, and any relevant public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. The December 2014 focused research report referenced previously upholds the findings of the April 2007 report and indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides

[1] The report is available on the internet at *https://rosap.ntl.bts.gov/view/dot/16462.*

[2] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. Cardiovascular: § 391.41(b)(4), paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following applicants have been denied an exemption from the physical qualification standards in § 391.41(b)(4):

Rosie A. Byrd (TX)
Thomas Jacobs (NY)
Lee Latin (NC)
Wayne Pimpare (ME)
Bradley Plunket (IL)

The applicants have, prior to this notice, received a letter of final disposition regarding their exemption request. The decision letter fully outlined the basis for the denial and constitute final action by the Agency. The names of these individuals published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–06120 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2021–0026]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 32 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on March 15, 2022. The exemptions expire on March 15, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0026, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On February 3, 2022, FMCSA published a notice announcing receipt of applications from 32 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (87 FR 6231). The public comment period ended on March 7, 2022, and four comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received four comments in this proceeding. Of the four comments received, three were in support of Callon Hegman's seizure exemption application and one was in support of Shaen Smith's seizure exemption application.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the commercial driver's license Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the February 3, 2022, **Federal Register** notice (87 FR 6231) and will not be repeated in this notice.

These 32 applicants have been seizure-free over a range of 2 to 37 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 32 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Andrew Anzalone (MA)
Anthony Cavaliere (NY)
Shane Chacon (ID)
Brad Crawford (LA)
Michael Davee (CA)
Callon Hegman (MO)
Jacob Hitchcock (IA)
Holly Hobert (NE)
Gary Johnson (MO)
Gregory Johnson (NC)
Lance Johnson (TN)
Alan Keil (HI)
Kim Langan (CA)
Armando Macias-Tovar (FL)
Christian Mandahl (MT)
Joseph Mendoza (IN)
Edna Merritt (TN)
Richard Packer (ID)
Alexander Paradis (RI)
Steven Paul (WI)
Kevin Podman (IL)
Michael Reimer (CA)
Richard Riley (IA)
Charles Rivet (IA)
Brian Runk (PA)
Lucas Schmidt (NY)
Bradley Scruggs (CA)
Kacen Schaffer (CO)
Shaen Smith (MN)
Kip West (CO)
Derek Wettstein (TX)
Jeremy Williams (MS)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–06118 Filed 3–22–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Report of International Transportation of Currency or Monetary Instruments; FinCEN Report 105

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, FinCEN invites comments on a renewal, without change, of existing information collection requirements for the Report of International Transportation of Currency or Monetary Instruments (CMIR). Although no changes are proposed to the information collection itself, this request for comments covers a proposed updated burden estimate for the information collection. This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments are welcome, and must be received on or before May 23, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2022–0006 and the specific Office of Management and Budget (OMB) control numbers 1506–0014.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2022–0006 and OMB control number 1506–0014.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 and applicable OMB regulations and guidance. Comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other

legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act).[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[2] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[3]

31 U.S.C. 5316 requires, with limited exceptions, that a person, or an agent or bailee of the person, file a report when the person, agent, or bailee knowingly: (i) Transports, is about to transport, or has transported monetary instruments[4] of more than $10,000 at one time from a place in the United States to or through a place outside the United States, or to a place in the United States from or through a place outside the United States; or (ii) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States. The regulations implementing this statutory requirement are found at 31 CFR 1010.340.

31 CFR 1010.340(a) requires each person[5] who physically transports, mails, or ships, or causes to be physically transported, mailed or shipped, currency[6] or other monetary instruments[7] in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, to file a CMIR.[8]

31 CFR 1010.340(b) requires each person in the United States who receives at any one time currency or other monetary instruments exceeding $10,000 in the aggregate, which have been transported, mailed, or shipped to such person from any place outside the United States, to file a CMIR if the CMIR has not already been filed pursuant to 31 CFR 1010.340(a). The CMIR must include the amount, the date of receipt, the form of monetary instruments, and the person from whom the funds were received.

31 CFR 1010.340(c) includes a list of persons that are not required to file a CMIR, even if they satisfy the conditions of 31 CFR 1010.340(a) or (b). 31 CFR 1010.340(d) clarifies that a transfer of funds through normal banking procedures, which does not involve the physical transportation of currency or monetary instruments, is not required to be reported on the CMIR.

According to the CMIR instructions, each person who receives currency or other monetary instruments in the United States must file a CMIR within 15 days after receipt of the currency or monetary instruments with the United States Customs and Border Protection (CBP) officer in charge at any port of entry or departure, or by mail.[9] Travelers carrying currency or other monetary instruments with them must file the CMIR at the time they enter the United States or at the time they depart the United States with the CBP officer in charge at any port of entry or departure.[10]

A transportation, mailing, or shipping of currency or monetary instruments does not need to be reported if any other participants in that cross-border transportation, mailing, or shipping previously filed a complete and accurate CMIR. If, however, a complete and accurate CMIR has not been filed with respect to a given transaction, no person required to file the CMIR will be excused for failure to do so.

A person transporting their own currency or monetary instruments (a ''traveler'') in excess of $10,000, or shipping, mailing, or receiving such value on their own behalf, must provide their own information when completing the CMIR. In completing a CMIR, a person acting for anyone else when transporting, shipping, mailing, or receiving currency or monetary instruments (a ''currency transporter'') in excess of $10,000 must provide (a) the person's own information, and (b) information about (i) the person on whose behalf the transaction was conducted, (ii) the person from whom the currency or monetary instruments were received, and/or (iii) the person to whom the currency or monetary instruments were shipped.[11]

II. Paperwork Reduction Act of 1995 (PRA)[12]

Title: Reports of transportation of currency or monetary instruments (31 CFR 1010.340).

OMB Control Numbers: 1506–0014.

Report Number: FinCEN Report 105—Report of International Transportation of Currency or Monetary Instruments (CMIR).[13]

Abstract: FinCEN is issuing this notice to renew the OMB control number for the CMIR regulations and report.

Affected Public: Individuals and entities.

Type of Review:

• Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 184,709 reports (average number of CMIRs filed annually over the period 2017–2019).[14]

Estimated Reporting and Recordkeeping Burden: FinCEN estimates that the total annual burden and cost to comply with the CMIR

[1] The AML Act was enacted as Division F, §§ 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat 3388 (2021).

[2] Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the AML Act added language further expanding the scope of the BSA but did not amend these longstanding purposes.

[3] Treasury Order 180–01.

[4] For purposes of 31 U.S.C. 5316, monetary instruments is defined in 31 U.S.C. 5312(a)(3) as amended by section 6102(d)(1)(C) of the AML Act.

[5] FinCEN regulations define a ''person'' as an individual, a corporation, partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities. 31 CFR 1010.100(mm).

[6] FinCEN regulations define currency in 31 CFR 1010.100(m).

[7] FinCEN regulations define monetary instruments in 31 CFR 1010.100(dd).

[8] A person is deemed to have caused such transportation, mailing or shipping when he or she aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person. 31 CFR 1010.340(a).

[9] *See* FinCEN Report 105—CMIR, General Instructions at *https://www.fincen.gov/sites/default/files/shared/fin105_cmir.pdf.*

[10] In early 2020, CBP implemented a web-based platform for the electronic completion of CMIRs by travelers transporting their own currency or monetary instruments. Travelers using this platform must still present the evidence of the electronic completion of the report to the CBP officer in charge at any port of entry or departure. *See https://fincen105.cbp.dhs.gov/#/.*

[11] *See supra* note 9. *See* also, FIN–2014–G002, CMIR guidance for common carriers of currency, including armored car services, Aug.1, 2014. *See https://www.fincen.gov/resources/statutes-regulations/guidance/cmir-guidance-common-carriers-currency-including-armored.*

[12] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[13] A copy of the CMIR can be found on FinCEN's website at *https://www.fincen.gov/sites/default/files/shared/fin105_cmir.pdf.* A copy of the CMIR can also be found on the CBP website at *https://fincen105.cbp.dhs.gov/#/.*

[14] *See* Tables 1 and 2 below.

regulations, in hours and dollars, is the sum of the following estimates:

(a) The total number of CMIRs filed annually;

(b) The time and cost for travelers to report transporting, mailing, shipping, or receiving their own currency or monetary instruments;

(c) The time and cost for currency transporters to report transporting, mailing, shipping, or receiving currency or monetary instruments on behalf of others;

(d) The cost to CBP to receive, review, and process CMIRs; and

(e) The cost to FinCEN to upload and store CMIRs.

1. Estimate of Number of CMIRs Filed Annually

Using CBP data, FinCEN identified the number of CMIRs filed over the past five years, broken down by the dollar amount reported on individual CMIRs.

TABLE 1—CMIRS FILED BETWEEN 2017–2021, BY CMIR REPORTING AMOUNT

CMIR reporting amount	Year					Grand total
	2017	2018	2019	2020	2021(*)	
$10 million and above	1,761	2,140	2,101	899	306	7,207
$1 million and above	5,960	6,678	6,932	3,086	2,910	25,566
$500,000 and above	2,653	2,893	2,915	1,637	1,817	11,915
$250,000 and above	2,953	3,123	2,780	1,635	1,556	12,047
$100,000 and above	4,684	4,784	4,270	2,201	2,847	18,786
$50,000 and above	10,674	9,997	9,452	4,921	5,834	40,878
$10,000 and above	169,474	152,318	145,586	59,520	79,428	606,326
Total CMIRs per Year	198,159	181,933	174,036	73,899	94,698	722,725

(*) Up to and including November 2021.

Because the COVID–19 pandemic severely impacted cross-border travel during 2020 and, to a lesser degree, 2021, FinCEN restricted its average annual CMIR reporting estimate to the average number of CMIRs filed between 2017–2019.

TABLE 2—AVERAGE NUMBER OF CMIRS FILED BETWEEN 2017–2019, BY CMIR REPORTING AMOUNT

CMIR reporting amount	Year			Grand total	Average	Tiers	Percent
	2017	2018	2019				
$10 million and above	1,761	2,140	2,101	6,002	2,001	14,296	7.74
$1 million and above	5,960	6,678	6,932	19,570	6,523		
$500,000 and above	2,653	2,893	2,915	8,461	2,820		
$250,000 and above	2,953	3,123	2,780	8,856	2,952		
$100,000 and above	4,684	4,784	4,270	13,738	4,579	170,413	92.26
$50,000 and above	10,674	9,997	9,452	30,123	10,041		
$10,000 and above	169,474	152,318	145,586	467,378	155,793		
Total CMIRs per Year	198,159	181,933	174,036	554,128	184,709	184,709	100.00

FinCEN estimates that approximately 184,709 CMIRs are filed annually.[15] To calculate the different compliance burdens for travelers filing CMIRs on their own behalf, and currency transporters reporting transactions on behalf of other persons, FinCEN separated the annual estimate into two tiers:

(a) 14,296 CMIRs (or 7.74% of the total estimate) have reporting amounts of $250,000 and above. FinCEN assesses that CMIRs reporting $250,000 or more are likely CMIRs filed by currency transporters.

b) 170,413 CMIRs (or 92.26% of the total estimate) have reporting amounts of less than $250,000. FinCEN assesses that CMIRs reporting less than $250,000 are likely CMIRs filed by travelers on behalf of themselves.

The information required to be reported on the CMIR is basic identifying and transaction information which would be readily accessible to a traveler or currency transporter. For instance, a traveler only has to report identifying information on themselves. A currency transporter has to report identifying information on itself, as well as on the person or business on whose behalf the currency is being transported. Both travelers and currency transporters are required to report on the type and amount of the currency being transported. For these reasons, FinCEN estimates that the completion of a CMIR filed by travelers reporting transactions involving their own currency or monetary instruments (including both the completion of the report and the storing of a copy) will require 15 minutes, while the completion of a CMIR filed by currency transporters will require 30 minutes.

2. Estimated Cost for Travelers Reporting Transactions Involving Their Own Currency or Monetary Instruments

To estimate the cost of compliance with CMIR reporting requirements for travelers, FinCEN used an average fully loaded wage rate of $38.44 per hour (composed of $27.07 per hour, the mean hourly wage for all employees from the May 2020 National Occupational Employment and Wage Estimates report,[16] multiplied by a private

[15] *See* Table 2.

[16] *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates,*

industry benefits factor of 1.42).[17] FinCEN estimates the annual compliance cost of CMIRs filed by travelers reporting transactions involving their own currency or monetary instruments at $1,637,669 (170,413 reports multiplied by the average fully loaded wage rate of $38.44 per hour, multiplied by the ratio of 15 minutes/60 minutes, rounded up to the nearest hour and dollar).

3. Estimated Cost for Currency Transporters Reporting Transactions Involving Currency or Monetary Instruments Belonging to Others

To estimate the cost of compliance with CMIR reporting requirements for currency transporters, FinCEN calculated an average weighted fully loaded wage rate representing the participation of two different employee levels in the preparation of the report: An operational level that fills in the report, and a direct supervision level that controls it.

TABLE 3—FULLY-LOADED HOURLY WAGE PER ROLE AND BUREAU OF LABOR STATISTICS (BLS) JOB POSITION

Role	BLS-code	BLS-name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
Direct Supervision	13–1041	Compliance Officer	$34.18	1.42	$48.54
Operations	43–3071	Teller	15.68	1.42	22.27

Based on an allocation of twenty minutes (approximately 67% of the total estimated time to complete and file a CMIR) for the operational level to complete and store a copy of the report, and ten minutes (approximately 33% of the total estimated time to complete and file a CMIR) for the direct supervision level to compare the completed report against transportation documents, the weighted fully loaded wage would be:

TABLE 4—WEIGHTED FULLY LOADED PROPORTIONAL COST

Component	Direct supervision		Operations		Weighted average hourly cost
	Percent time	Hourly cost	Percent time	Hourly cost	
Recordkeeping and reporting	33%	$48.54	67%	$22.27	$31.03

FinCEN estimates the annual compliance cost of CMIRs filed by currency transporters reporting transactions conducted on behalf of others, at $221,802 (14,296 reports multiplied by the weighted fully loaded wage rate of $31.03, multiplied by the ratio of 30 minutes/60 minutes, rounded up to the nearest hour and dollar).

Estimated Number of Respondents: 184,709 (average number of CMIRs filed over the period 2017–2019).

Estimated Burden per Respondent: 15 minutes per report filed by travelers reporting transactions involving their own currency or monetary instruments, and 30 minutes per report filed by currency transporters reporting transactions on behalf of others.

Estimated Total Annual Burden Hours: 49,751 hours.[18]

Estimated Total Annual Cost to the Public: $1,859,471 ($1,637,669 for travelers and $221,802 for currency transporters).

Estimated Total Annual Cost to the Government: $1,434,835.29, resulting from:

(a) CBP's processing cost: $1,416,364.39.[19]

(b) FinCEN's upload and storing cost: $18,470.90 (the estimated annual cost to FinCEN is $0.10 per report, times the estimated number of annual reports (184,709 reports)).[20]

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. Records required to be retained under the BSA must be retained for five years.

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: (i) 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; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) 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 (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2022–06157 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names

(May 2020), available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[17] The ratio between benefits and wages for private industry workers is $10.83 (hourly benefits)/$25.80 (hourly wages) = 0.42. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Table 4. Employer Costs for Employee Compensation for private industry workers by occupational and industry group,* (March 2021), available at *https://www.bls.gov/news.release/ecec.t04.htm.*

[18] The sum of 170,413 reports * 15 minutes/60 minutes per hour, and 14,296 reports * 30 minutes/60 minutes per hour, rounded up to the nearest hour.

[19] According to CBP, between July 1, 2020 and June 30, 2021, processing paper CMIRs cost $1,116,364.39. According to CBP, the annual cost to process electronic CMIRs is $300,000. ($1,116,364.39 + $300,000 = $1,416,364.39).

[20] The estimated cost to FinCEN per BSA report submitted to FinCEN is $0.10.

of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 18, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. MOLINA MONTEJO, Werner Dario, Aldea Agua Zarca, Huehuetenango, Guatemala; Canton La Candelaria Z.0, La Democracia, Huehuetenango, Guatemala; DOB 12 Nov 1984; POB Santa Ana Huista, Huehuetenango, Guatemala; nationality Guatemala; Gender Male; Cedula No. Cedula: M–137560 (Guatemala); Passport 111331000075604 (Guatemala) issued 08 Feb 2007 expires 26 Oct 2012; NIT # 27751171 (Guatemala); Driver's License No. 20332679 (Guatemala); C.U.I. 1785205271331 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(iii) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' (the ''Order''), for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LOS HUISTAS DRUG TRAFFICKING ORGANIZATION, a sanctioned person.

2. MOLINA LOPEZ, Eugenio Dario, La Democracia, Huehuetenango, Guatemala; Agua Zarca, Huehuetenango, Guatemala; Santa Ana Huista, Huehuetenango, Guatemala; San Antonio Huista, Huehuetenango, Guatemala; DOB 02 Jun 1964; POB Guatemala; nationality Guatemala; Gender Male; NIT # 6574734 (Guatemala); C.U.I. 1798585561331 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. MONTEJO SAENZ, Axel Bladimir (a.k.a. ''MOSH''), Guatemala; DOB 26 Oct 1986; POB Santa Ana Huista, Huehuetenango, Guatemala; nationality Guatemala; Gender Male; Cedula No. M–138057 (Guatemala); NIT # 35348208 (Guatemala); C.U.I. 1613087591331 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. MORENO LOPEZ, Ervin Rene, Canton La Candelaria Z.0, La Democracia, Huehuetenango, Guatemala; DOB 26 Jan 1976; POB Guatemala; nationality Guatemala; Gender Male; NIT # 1654613K (Guatemala); C.U.I. 1596467901301 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, LOS HUISTAS DRUG TRAFFICKING ORGANIZATION, a sanctioned person.

5. SALAZAR FLORES, Freddy Arnoldo (a.k.a. SALAZAR FLORES, Fredy Arnoldo; a.k.a. ''BOICA''; a.k.a. ''BOYCA''), Guatemala; DOB 14 Feb 1984; POB Guatemala; nationality Guatemala; Gender Male; NIT # 34746072 (Guatemala); C.U.I. 2639667390611 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. SAMAYOA MONTEJO, Roger Antulio (a.k.a. ''TULI''), Guatemala; DOB 07 Oct 1989; POB Guatemala; nationality Guatemala; Gender Male; NIT # 72405902 (Guatemala); C.U.I. 2344272801331 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. SAMAYOA MONTEJO, Roger Antulio (a.k.a. ''TULI''), Guatemala; DOB 07 Oct 1989; POB Guatemala; nationality Guatemala; Gender Male; NIT # 72405902 (Guatemala); C.U.I. 2344272801331 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(iii) of the Order for having acted or purported to act for or on behalf of, directly or indirectly, Aler Baldomero, SAMAYOA RECINOS and the LOS HUISTAS DRUG TRAFFICKING ORGANIZATION, all sanctioned persons.

7. SAMAYOA RECINOS, Aler Baldomero (a.k.a. ''EL CHICHARRA''), Aldea Cuatro Caminos, Santa Ana Huista, Huehuetenango, Guatemala; Aldea Yuxen, Santa Ana Huista, Huehuetenango, Guatemala; DOB 27 Feb 1967; POB Santa Ana Huista, Huehuetenango, Guatemala; nationality Guatemala; Gender Male; Cedula No. M–1300003118 (Guatemala); Passport 111331000031186 (Guatemala) issued 12 Feb 2001 expires 03 Jul 2012; NIT # 5566568 (Guatemala); Driver's License No. 30791794 (Guatemala); C.U.I. 1892644891331 (Guatemala) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

1. COMPRADORES Y EXPORTADORES DE CAFE CAPTZIN, SOCIEDAD ANONIMA (a.k.a. ''COMEXCAFE''), Canton La Candelaria Z.0, La Democracia, Huehuetenango, Guatemala; NIT # 68897952 (Guatemala) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(iii) of the Order for having acted or purported to act for or on behalf of, directly or indirectly, Eugenio Dario MOLINA LOPEZ, a sanctioned person.

2. LOS HUISTAS DRUG TRAFFICKING ORGANIZATION (a.k.a. ''LOS HUISTAS DTO''), Santa Ana Huista, Huehuetenango, Guatemala; San Antonio Huista, Huehuetenango, Guatemala; La Democracia, Huehuetenango, Guatemala; Target Type Criminal Organization [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Dated: March 18, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–06143 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property

subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel. 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 17, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individual

1. GOETZ, Alain Francois Viviane (a.k.a. GOETZ, Alain; a.k.a. GOZ, Alen), The Palm Jumeirah 0–35, 65919, Dubai, United Arab Emirates; Villa 39, Frond N, The Palm Jumeirah, Dubai, United Arab Emirates; DOB 24 Apr 1965; alt. DOB 20 Apr 1965; POB Antwerp, Belgium; nationality Belgium; citizen Turkey; Gender Male; Passport EP985086 (Belgium) issued 08 May 2018 expires 07 May 2025; alt. Passport 50641895930 (Turkey) expires 10 Jul 2030; Identification Number 784196536027277 (United Arab Emirates) (individual) [DRCONGO] (Linked To: AFRICAN GOLD REFINERY LIMITED).

Designated pursuant to section 1(a)(ii)(C)(7) of Executive Order 13413 of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo,'' 71 FR 64105, 3 CFR, 2006 Comp., p. 247, as amended by Executive Order 13671 of July 8, 2014 ''Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo,'' 79 FR 39949, 3 CFR, 2014 Comp., p. 280 (''the Order''), for being responsible for or complicit in, or having engaged in, directly or indirectly, support to persons, including armed groups, involved in activities that threaten the peace, security, or stability of the Democratic Republic of the Congo (DRC) or that undermine democratic processes or institutions in the DRC, through the illicit trade in natural resources of the DRC.

Also designated pursuant to section 1(a)(ii)(E) of the Order, for being a leader of AFRICAN GOLD REFINERY LIMITED, an entity whose property and interests in property are blocked pursuant to the Order.

Also designated pursuant to section 1(a)(ii)(G) of the Order, for having acted or purported to act for or on behalf of, directly or indirectly, AFRICAN GOLD REFINERY LIMITED, an entity whose property and interests in property are blocked pursuant to the Order.

Entities

1. AFRICAN GOLD REFINERY LIMITED (a.k.a. AFRICAN GOLD REFINERY UGANDA), Plot No. M103 and 106, Sebugwawo Road, Entebbe, Uganda; P.O. Box 37574, Kampala, Uganda; Organization Type: Mining of other non-ferrous metal ores; Target Type Private Company; Registration Number 180334 (Uganda) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(C)(7) of the Order, for being responsible for or complicit in, or having engaged in, directly or indirectly, support to persons, including armed groups, involved in activities that threaten the peace, security, or stability of the DRC or that undermine democratic processes or institutions in the DRC, through the illicit trade in natural resources of the DRC.

2. AGOR DMCC (a.k.a. AGOR LTD; a.k.a. AGOR PRECIOUS METALS), Office Number 703A, 7th Floor, Mazaya Business Avenue, AAI, JLT, Dubai, United Arab Emirates; Organization Type: Manufacture of jewellery and related articles; Commercial Registry Number 30641 (United Arab Emirates); alt. Commercial Registry Number 805920 (United Arab Emirates) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

3. AGR INTERNATIONAL LIMITED, Global Gateway, 8 rue de la Perle, Providence, Mahe, Seychelles; Organization Type: Activities of holding companies; Target Type Private Company; Company Number 200304 (Seychelles) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

4. ALAXY (a.k.a. ALAXY BVBA; f.k.a. BERKENRODE BVBA), Jacob Jacobsstraat 56, Antwerp 2018, Belgium; Organization Type: Other business support service activities n.e.c.; Target Type Private Company; Enterprise Number 0478862274 (Belgium) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

5. CG—VASTGOED INVEST, Jacob Jacobsstraat 56, Antwerp 204818, Belgium; Organization Type: Activities of holding companies; Target Type Public Company; Enterprise Number 0806408906 (Belgium) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

6. GOETZ GOLD LLC (a.k.a. PGR GOLD LLC; a.k.a. PGR GOLD TRADING LLC), Dubai, United Arab Emirates; Organization Type: Mining of other non-ferrous metal ores; Commercial Registry Number 689308 (United Arab Emirates) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

7. OROFINO NV (a.k.a. ''OROFINO''), Jacob Jacobsstraat 56, Antwerp 2018, Belgium; Organization Type: Activities of holding companies; Target Type Public Company; Enterprise Number 0892529761 (Belgium) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

8. PREMIER GOLD REFINERY LLC, Al Qusais Industrial 5, Dubai, United Arab Emirates; P.O. Box 64701, Dubai, United Arab Emirates; Plot No. 248–384, Dubai, United Arab Emirates; Organization Type: Manufacture of basic precious and other non-ferrous metals; Business Registration Number 716708 (United Arab Emirates) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

9. WWG DIAMONDS, Jacob Jacobsstraat 56, Antwerp 2018, Belgium; Target Type Private Company; Enterprise Number 0821135682 (Belgium) [DRCONGO] (Linked To: GOETZ, Alain Francois Viviane).

Designated pursuant to section 1(a)(ii)(G) of the Order, for being owned or controlled by, directly or indirectly, Alain Francois Viviane GOETZ, a person whose property and interests in property are blocked pursuant to the Order.

Dated: March 17, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–06087 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to unavoidable delays in this year's approval process, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Friday, April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Friday, April 1, 2022, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 17, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–06111 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 8876

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 public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8876, *Excise Tax on Structured Settlement Factoring Transactions.*

DATES: Written comments should be received on or before May 23, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–1826—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Structured Settlement Factoring Transactions.

OMB Number: 1545–1826.

Project Number: Form 8876.

Abstract: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 5 hrs., 36 min.

Estimated Total Annual Burden Hours: 560.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 16, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–06132 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted For Public Comment; Comment Request for requests for Revocation of Election Filed Under I.R.C. 83(b)

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 public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction

Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to requests for revocation of election filed under I.R.C. 83(b).

DATES: Written comments should be received on or before May 23, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–2018—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revocation of Election filed under I.R.C. 83(b).

OMB Number: 1545–2018.

Project Number: Rev. Proc. 2006–31.

Abstract: This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).

Current Actions: There is no change in the paperwork burden previously approved by OMB. This request is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and households.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 17, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–06133 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to unavoidable delays in this year's approval process, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, March 30, 2022.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 336–690–6217.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Wednesday, March 30, 2022, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce Street, Mail Code 1005DAL, Dallas, Texas, 75242 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 17, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–06115 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to unavoidable delays in this year's approval process, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, March 30, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, March 30, 2022, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for

consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 17, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–06113 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to unavoidable delays in this year's approval process, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Thursday, March 31, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, March 31, 2022, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information, please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: March 17, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–06112 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to unavoidable delays in this year's approval process, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Thursday, March 31, 2022.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, March 31, 2022 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 17, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–06114 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to unavoidable delays in this year's approval process, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Friday, April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Friday, April 1, 2022, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 17, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–06116 Filed 3–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Homeowner Assistance Fund

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 23, 2022.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by the following method:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2022–0007 and the specific Office of Management and Budget (OMB) control number 1505–0269.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Christopher Sun by emailing *HAF@treasury.gov,* calling 877–398–5861, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Homeowner Assistance Fund.

OMB Control Number: 1505–0269.

Type of Review: Extension of a currently approved collection.

Description: On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act''), Public Law 117–2. Title III, Subtitle B, Section 3206 of the Act established the Homeowner Assistance Fund and provides $9.961 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or Tribally Designated Housing Entities, as applicable, and the Department of Hawaiian Home Lands (collectively the ''eligible entities'') to mitigate financial hardships associated with the coronavirus pandemic, including for the purposes of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing.

Form: Acceptance of Award Terms Form; Notice of Funds Request; Recipient Payment Information Form; Assurances of Compliance with Civil Rights Requirements; Interim Reporting, Quarterly Reporting and Annual Reporting.

Affected Public: State and tribal governments.

Estimated Number of Respondents: 651.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 5,465.

Estimated Time per Response: 15 minutes to 4 hours.

Estimated Total Annual Burden Hours: 7,590 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

(Authority: 44 U.S.C. 3501 *et seq.*)

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–06125 Filed 3–22–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Homeless Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice of solicitation for nominations.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Advisory Committee on Homeless Veterans (ACHV) (hereinafter in this section referred to as ''the Committee'').

DATES: Nominations for membership on the Committee must be received *no later than 5:00 p.m. EST on April 8, 2022.*

ADDRESSES: All nominations should be emailed to *ACHV@va.gov.* Please write Nomination for ACHV Membership in the subject line.

FOR FURTHER INFORMATION CONTACT: Anthony Love, Designated Federal Officer, ACHV; VHA Homeless Programs Office at *ACHV@va.gov* or 202–461–1902. A copy of the Committee charter and list of the current membership can also be obtained by contacting *ACHV@va.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice to the Secretary of the Department of Veterans Affairs (VA) on benefits and services provided to homeless Veterans by VA. In providing advice to the Secretary and making recommendations on improved services for homeless Veterans, the Committee carries out the duties set forth in 38 U.S.C. 2066 to operate under the provisions of the Federal Advisory Committee Act, as amended 5 U.S.C. App. 2. Public Law 115–251 Section 147 extended the Committee's statutory authority to September 30, 2022.

Membership Criteria and Qualifications: The Veterans Health Administration (VHA) is requesting nominations for upcoming vacancies on the Committee. The Committee is comprised of not more than 15 members. Several members may be regular Government employees, but the majority of the Committee's membership shall consist of non-Federal employees, appointed by the Secretary from the general public, serving as Special Government employees.

The expertise required of Committee membership includes, but is not limited to:

a. Veterans Service Organizations
b. Advocates of homeless Veterans
c. Community-based providers of services to homeless individuals
d. Previously homeless Veterans
e. State Veterans Affairs Officials
f. Experts in the treatment of individuals with mental illness
g. Experts in the treatment of substance use disorders
h. Experts in the development of permanent housing alternatives for lower income populations
i. Experts in vocational rehabilitation
j. Such other organizations or groups as the Secretary considers appropriate
k. Experts with program or policy experience in homelessness (not

required, but may be expertise that SECVA considers appropriate)

Membership Requirements: The Committee meets at least twice annually. Individuals selected for appointment to the Committee shall be invited to serve a two to three year term. The Secretary may reappoint Committee members for an additional term of service. Committee members will receive per diem and reimbursement for eligible travel expenses incurred. Self-nominations and nominations of non-Veterans will be accepted. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission:

Nominations must be typed (12-point font) and include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating that he/she is a U.S. citizen and is willing to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's resume or curriculum vitae that is no more than three pages in length.

The resume should show professional work experience, and Veterans service involvement, and

(4) A one-page cover letter. The cover letter must summarize:

a. The nominee's interest in serving on the committee and contributions she/he can make to the work of the committee;

b. any relevant Veterans service activities she/he is currently engaged in;

c. the military branch affiliations and timeframe of military service (if applicable);

d. information about the nominee's personal and professional qualifications and background that would give her/him a diverse perspective on Veterans' matters; and

e. a statement confirming that she/he is not a Federally registered lobbyist.

The Department makes every effort to ensure that the membership of VA Federal Advisory Committees are diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. The Committee is authorized by statue, 38 U.S.C. 2066, to operate under the provisions of the Federal Advisory Committee Act, as amended 5 U.S.C. Appendix 2. Public Law 115–251 Section 147 extended the Committee's statutory authority to September 30, 2022.

Dated: March 18, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–06170 Filed 3–22–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans' Rural Health Advisory Committee will hold a teleconference meeting Tuesday, April 5, 2022, through Thursday April 7, 2022. The meeting will convene at 11:00 a.m. EST and adjourn at 2:30 p.m. EST each day. The meeting sessions are open to the public. The teleconference zoom link *https://zoom.us/j/93537309124* and phone number is 1–646–558–8656, Participant Code # 93537309124.

The purpose of the Committee is to advise the Secretary of VA on rural health care issues affecting Veterans. The Committee examines programs and policies that impact the delivery of VA rural health care to Veterans and discusses ways to improve and enhance VA access to rural health care services for Veterans.

The agenda will include updates from Department leadership; the Executive Director, VA Office of Rural Health; and the Committee Chair; as well as presentations by subject matter experts on general rural health care access.

Public comments will be received at 3:00 p.m. on April 7, 2022. Interested parties should contact Ms. Judy Bowie, by email at *VRHAC@va.gov,* or by mail at 810 Vermont Avenue NW (10P1R), Washington, DC 20420. Individuals wishing to speak are invited to submit a 1–2-page summary of their comment for inclusion in the official meeting record. Any member of the public seeking additional information should contact Ms. Bowie at the phone number or email address noted above.

Dated: March 17, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–06124 Filed 3–22–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Wednesday,
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Part II

Federal Communications Commission

47 CFR Part 64
Third Mandatory Data Collection for Calling Services for Incarcerated People; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, DA 22–52; FRS 69893]

Third Mandatory Data Collection for Calling Services for Incarcerated People

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Wireline Competition Bureau and the Office of Economics and Analytics (WCB/OEA) adopt an Order defining the contours and specific requirements of the forthcoming Third Mandatory Data Collection for calling services for incarcerated people.

DATES: The effective date of the Order is delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date once the Office of Management and Budget (OMB) has provided the approval required by the Paperwork Reduction Act (PRA).

ADDRESSES: You may submit comments, identified by WC Docket No. 12–375, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Erik Raven-Hansen, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–1532 or via email at *Erik.Raven-Hansen@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Order, DA 22–52, released January 18, 2022. The full text of this Order is available at *https://docs.fcc.gov/public/attachments/DA-22-52A1.pdf.*

I. Introduction

1. By this Order, the WCB/OEA adopt instructions, a reporting template, and a certification form to implement a Third Mandatory Data Collection related to calling services for incarcerated people. The reporting template consists of a Word document and Excel spreadsheets. For simplicity, the Commission refers to these respective portions of the reporting template as the Word template and the Excel template. The Commission's actions today largely adopt the proposals contained in the Third MDC Proposal document, with certain refinements and reevaluations responsive to record comments.

II. Background

2. In the 2021 ICS Order, the Commission directed WCB/OEA to develop a new data collection ''related to providers' operations, costs, demand, and revenues.'' The Commission has conducted two prior mandatory data collections (MDCs) relating to inmate calling services (calling services or ICS) in the past—the 2014 First Mandatory Data Collection and the 2019 Second Mandatory Data Collection. The Commission explained that it would use the collected information to set permanent interstate and international inmate calling services provider-related rate caps that more closely reflect providers' costs of serving correctional facilities. The Commission also emphasized that the information would enable it to evaluate and, if warranted, revise the current caps for ancillary service charges.

3. The Commission delegated authority to WCB/OEA to implement this Third Mandatory Data Collection and directed WCB/OEA to develop a template and instructions for the collection. The Commission also directed WCB/OEA to consider suggestions in the record regarding, among other matters, data granularity, cost allocation, and specificity in definitions and instructions in designing the data collection, and ''to require each provider to fully explain and justify each step of its costing process'' including, where appropriate, ''to specify the methodology the provider shall use in any or all of those steps.''

4. Pursuant to this delegation, WCB/OEA developed proposals for the Third Mandatory Data Collection and issued a Public Notice seeking comments on all aspects of the proposed collection. Concurrently, pursuant to the Paperwork Reduction Act of 1995 (PRA), the Commission published a document in the **Federal Register** seeking comment on potential burdens of the proposed one-time reporting requirements.

5. The Commission received comments from numerous ICS providers, public interest advocates, and other interested parties in response to the Public Notice, and one comment on the PRA document. The Commission received comments or reply comments in response to this *Public Notice* from Benj Azose; Global Tel*Link Corporation (GTL); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prison Policy Initiative, Inc. (PPI); Securus Technologies, LLC (Securus); Worth Rises; and the Wright Petitioners, the Benton Institute for Broadband & Society, and Public Knowledge (collectively, Public Interest Parties). GTL filed the comment in response to the PRA Notice. Recently, GTL issued a press release announcing it had changed its name to ViaPath Technologies. For purposes of this Order, to avoid confusion with reference to the record, the Commission will continue to refer to this entity as GTL. The Commission has thoroughly considered all of these filings in implementing this final data collection. The Commission has also made a small number of minor conforming edits to the instructions and reporting template to, for example, ensure consistency in the use of defined terms.

III. Discussion

A. Implementing the Third Mandatory Data Collection

6. Pursuant to delegated authority, the Commission adopts the instructions, template, and certification form to implement the Third Mandatory Data Collection. Commenters generally

support the broad contours and specific requirements of the data collection as proposed in Third MDC Proposal document. In particular, the Commission received neither any comments criticizing the proposal to adopt separate Word- and Excel-formatted template forms, nor any proposals for an alternative organization or reporting structure. The Commission therefore implements the proposed structure.

7. Commenters did, however, offer suggestions to ''improve the quality, accuracy, and utility of the data collected.'' In response to these suggestions, the Commission has reevaluated some of the proposals and refined certain aspects of the instructions and templates, as set forth in greater detail below. These refinements include expanding the reporting period for cost data from one year to three years, revising certain proposed definitions, revamping the reporting of costs related to site commissions and security services, and reorganizing the reporting of operating expenses. The Commission concludes that these and the other modifications the Commission makes appropriately balance the need for ''detailed and specific instructions and templates'' and the desire to avoid unduly burdening providers. This conclusion is consistent with the Commission's finding in the *2021 ICS Order* that the benefits of conducting this data collection ''far outweigh any burden on providers'' given the ''adverse impact that unreasonably high rates and ancillary services charges have on incarcerated people and those family and loved ones they call.'' Commenters reinforce this Commission finding. In particular, commenters highlight the importance of the Third Mandatory Data Collection considering that the ''flaws in prior data collections impeded meaningful rate-setting analysis and, ultimately, led to the Third MDC.''

8. In finalizing the requirements for the data collection, the Commission does not resolve issues that are pending in the ICS rulemaking, such as the extent to which security costs are or are not related to ICS, or whether the Commission should change its rules, as some parties have suggested. As the Commission explained in the 2021 ICS Order, the purpose of this data collection is to provide the Commission with sufficient information to resolve various issues it is considering as part of that rulemaking, including the adoption of permanent interstate and international rate caps. Therefore, the Commission agrees with Worth Rises and others that this Order ''is not the proper administrative vehicle'' to revise the scope of the data collection or change Commission rules. In this regard, the Commission disagrees with GTL's suggestion that the Commission already has or will get certain information regarding, for example, ''site commission payments, correctional facilities served, and annual ICS and ancillary service charge revenues'' from the ICS Annual Reports. As the Commission explained in the *2021 ICS Order,* ''while the Annual Reports contain useful and relevant marketplace information on providers' rates and charges, the Commissions disagrees with the contention that the Annual Reports provide sufficient data to establish just and reasonable interstate inmate calling services rates.'' The Commission does not revisit this view here. The Annual Reports do not require the type of detailed and disaggregated cost reporting that the Commission requires in this data collection, which the Commission has determined is an ''essential prerequisite to adopting permanent interstate rate caps for both provider-related and facility-related costs.''

9. In the sections that follow, the Commission first addresses proposals to change specific data requests and then turns to proposals for more general revisions to the instructions.

B. Specific Data Requests

1. Categories of Information Requested

10. The Commission adopts a requirement for ICS providers to report customer prepayments separately and modify the definition and thus the calculation of ''Net Capital Stock'' to reflect the subtraction of customer deposits. PPI proposes this additional reporting requirement because ''customer prepayments are a material balance-sheet item for ICS carriers.'' The Commission finds that customer prepayments are a source of non-investor supplied capital that should be subtracted from the providers' net capital stock because providers are able to use these monies to finance their operations. This subtraction treats customer deposits as zero interest, non-investor supplied capital, since the return on net capital stock reflected in the providers' annual total expenses will be reduced in proportion to the reduction in net capital stock. The Commission also requires providers to report the interest, if any, paid on customer prepayments separately from other interest expenses; and the Commission allows providers to add the interest paid on the customer deposits directly to their capital expense and annual total expenses. The Commission modifies the definition of ''Capital Expenses'' to make this clear.

2. Factors Affecting the Costs of Providing Interstate and International Inmate Calling Services

11. In the Third MDC Proposal document, the Commission sought feedback about the types of data it should collect to help it understand the factors that affect the costs of providing interstate and international calling services at the facility level. The Commission proposed to collect data on billed minutes, unbilled minutes, average daily population (ADP), the number of telephones and kiosks installed, the opening and closing of accounts, admissions, releases, and weekly turnover rate. Based on record support, the Commission finds it appropriate to collect information on each of these metrics, including figures for new account generation and account termination. Securus argues that it would be sufficient to collect only ADP and data on the opening and closing of accounts while GTL asserts that the number of kiosks or telephones and account generation and termination are inaccurate indicators of demand. GTL asks us to rely solely on billed and unbilled minutes to determine demand. The Commission declines to implement these proposals. As an initial matter, the ADP reported for a facility may not always accurately indicate the demand for ICS at the facility or otherwise fully capture the factors affecting providers' costs. Thus, other metrics are critical in assessing cost causality. Obtaining data on activities like account set-up and termination will help the Commission understand if and how such activities impact providers' costs. In view of the above, the Commission finds GTL's suggestion that it can rely solely on billed and unbilled minutes too narrow. Instead, the Commission finds that collecting additional information on facility population metrics and account generation and termination will help the Commission better understand the providers' cost structures, including at relatively small facilities.

12. The Commission further adopts the proposal to require providers to submit weekly turnover rate data, where it is available. These data will supplement, and help the Commission correct potential flaws in, other population metrics (*i.e.,* facility-level ADP data and the figures for account generation and account termination). Some commenters disagree with this approach, arguing that it will impose a significant burden on providers because the facilities keep the pertinent data and

often lag in reporting the measures, leaving ICS providers without a reliable way to track arrests and releases. Given the record evidence indicating that turnover rates may play a significant role in cost causality at smaller facilities, these data are important. Providers can work with the respective facilities they serve to compile this data where providers otherwise have no other way to ascertain it. The Commission therefore declines the suggestion that the Commission refrains from collecting turnover data, where available, simply because such data may not be available for all facilities. The Commission concludes that the various population measures the Commission adopts collectively supplement one-another and will help the Commission understand provider cost drivers, particularly at smaller jails.

3. Site Commission Data

13. The Commission takes a series of steps to reform the proposals concerning site commission data in response to the record in an effort to obtain more detailed and disaggregated information. First, consistent with the Commission's actions in the 2021 ICS Order, the Commission adopts the proposal to require ICS providers to categorize their site commission payments as either legally mandated or contractually prescribed for each of calendar years 2019 through 2021. GTL claims that requiring this categorization for three calendar years would impose a significant burden on providers because they had no obligation to separate site commission payments before the rules adopted in the 2021 ICS Order became effective on October 26, 2021. The Commission finds that GTL's characterization of the burden is overstated. Once a provider establishes whether site commission payments were legally mandated or contractually prescribed as of October 26, 2021, the additional burden of determining their categorization during earlier portions of the reporting period should be relatively minor, particularly where the provider operated under the same facility contract for the prior two years.

14. Second, after considering record comments, generally, regarding the proposed site commission data and various ways of supplementing reportable site commission data, the Commission modifies, on its own motion, the instructions and reporting requirements for site commissions to require providers to disaggregate their reported site commission payment information between monetary and in-kind payments and, further, between fixed and variable payments. The Commission likewise requires providers to disclose each entity to which they pay site commissions at each facility in any fashion, and the amount of the same. The Commission finds that this additional disaggregated information will improve the Commission's understanding of the market and the role that site commissions play in the provision of inmate calling services.

15. Third, the Commission adopts Securus's proposal that it require providers to identify and report up-front site commission payments at the beginning of a contract as a subset of fixed site commissions. The Commission agrees that this information will ''provide a more accurate picture of overall site commissions,'' and the Commission finds that the associated burden on providers will be minimal.

16. The Commission also adopts a new requirement instructing providers to explain how they allocate site commission payments between ICS and non-ICS operations. The Commission agrees with PPI that this will resolve uncertainty in situations where carriers make site commission payments for both ICS and non-ICS services. Gathering this information is also consistent with the directive that the Commission ensure providers allocate common expenses between their ICS operations and other operations. Although Securus urges us to reject this proposal, claiming that it will ''further inject[ ] the Commission into unregulated services over which it has no jurisdiction,'' this information will help the Commission determine what portion, if any, of site commission payments are properly attributable to ICS.

17. The Commission rewords the instructions on the allocation of site commissions at the facility level to correct for a loophole that could otherwise result in some of a provider's total site commission payments not being allocated to any facility. Specifically, the Commission instructs providers to fully allocate any reported site commissions among the facilities associated with each site commission payment during the reporting period. One commenter suggests that the Commission should require providers to identify the contract that governs ICS at each facility and require disclosure of the amounts and types of site commissions paid under that contract so that the Commission may understand instances where site commission payments were received by non-facility entities such as a governmental agency. The Commission adopts the requirement for providers to report each entity to which they pay site commissions at each facility in any fashion, and the amount of the same as a less burdensome alternative that will help clarify site commission allocations at the facility level.

18. The Commission declines to adopt additional reporting requirements regarding how site commission payments are spent or how the expenditures are related to ICS. To be useful, such information would need to be broken down into categories similar to those that the Commission requires for provider costs. In addition, providers would most likely have to obtain this detailed categorized information from facility administrators, who, in turn, would have to expend significant efforts in compiling the requested information. In many cases, these administrators may be reluctant to provide accurate information about their use, especially where it bears no relationship to inmate calling. Given these circumstances, the Commission declines to require providers to collect and report this information.

4. Information on Security Services

19. In the Third MDC Proposal document, the Commission proposed to require providers to report their security costs in connection with their ICS and non-ICS-related operations as part of their reporting on site commission payments and sought comment on a number of associated issues. After considering the comments, the Commission expands the data collection to include additional inquiries regarding providers' security and surveillance services outside the site commission section, including inquiries requiring narrative explanations describing such services. ICS providers should be mindful that any reporting in the separate subcategories outside the Site Commissions section must be exclusive of the data reported in connection with site commissions to prevent double-counting of security and surveillance costs. This approach is consistent with Worth Rises' and the Public Interest Parties' arguments that the collection should capture all security costs, not just those incurred in the context of site commission payments, since many security and surveillance costs would be excluded under the proposed instructions. The Commission agrees and revises the instructions accordingly.

20. The Commission declines, however, to adopt a proposal that it collect more detailed information on security and surveillance costs spanning over 30 suggested categories of information. The Commission agrees with certain ICS providers that the requested level of granularity would be

overly burdensome. The Commission similarly declines to collect security and surveillance costs data ''at a granular level without ICS provider labeling'' or a breakdown of security costs included and excluded from in-kind site commission payments as requested by another commenter. The Commission invites providers to include in their written responses in the Word template any information they have that would be responsive to Worth Rises' requests. While the collection of robust security and surveillance cost data is a critical component of this data collection, the Commission finds that further granularity in reported security costs is unnecessary in light of the revisions it incorporates into the security and surveillance data collection as well as the adoption of instructions that require ICS providers to submit narrative explanations of such costs and cost allocations. The Commission directs providers to include in their narrative responses any information they have that would provide more granular information about their security and surveillance costs.

21. Finally, the Commission declines to address the issue of what categories, if any, of security and surveillance costs may be recoverable through interstate and international ICS rates. That issue is expressly teed up in the Commission's 2021 ICS Notice and is a matter for the Commission to decide as part of its rulemaking proceeding. The record confirms it is not the proper subject of this data collection Bureau-level Order.

5. Ancillary Service Charges Data

22. Although the Commission declines to modify the definition of ''Revenue-Sharing Agreement'' as discussed below, the Commission revises the instructions to require providers to identify the payor and payee in each Revenue-Sharing Agreement, as requested by PPI. The Commission agrees that this additional information indicating the flow of funds between such entities will shed useful light on revenue-sharing practices and help the Commission better understand how the marketplace for these agreements functions.

6. Other Proposals

23. Video Calling Services. One commenter requests that the Commission expands the data collection to require the reporting of detailed cost and other data specifically on providers' video calling services. As an initial matter, the Commission requires providers to report costs for non-ICS services, including any video services they offer. The Commission declines, however, to require providers to report detailed cost and other data on video services at this time. In *GTL* v. *FCC,* the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the Commission's reporting requirements related to video calling, finding that the Commission had not sufficiently explained how its statutory authority extends to such services. The Commission has not reached this question on remand. The Commission made no reference to video services in the guidelines it directed WCB/OEA to use in developing the data collection.

24. Additional Data Concerning Contracts. The Commission also declines to adopt requests that it collect all contracts between ICS providers and correctional facilities. Although collection of all, or a sample of, such contracts might assist the interpretation of facility-level data, the Commission finds at this time that the burden on providers of such a collection would outweigh any possible benefits, and would substantially increase the administrative burdens associated with processing the related data. Given that the Commission has authority to ask providers to produce specific contracts at any time if the need arises, the Commission declines to impose such an obligation at this time. The Commission made no reference to video services in the guidelines it directed WCB/OEA to use in developing the data collection.

25. Information Concerning Patent Assets/Royalty Expenditures. The Commission is not persuaded to expand the collection to obtain information concerning the potential use of patents as a tool for dominant carriers to prevent competition, as one commenter asks. The commenter does not articulate why or how the information it requests, such as the identity of the payor/licensor or a copy of any contract, would aid the Commission's review of inmate calling services costs and pricing. The Commission also finds that the production of this information would lie outside the scope of this collection while unduly burdening providers. Accordingly, the Commission declines to require providers to submit information regarding patents.

26. Miscellaneous. The Commission revises all references to ''credit card'' in the instructions and templates to instead refer to ''payment card,'' a change that will avoid confusion and help us obtain data associated with both debit and credit cards. The Commission clarifies that this adopted revision only relates to this data collection and does not extend to definitions contained in the Commission's rules. The Commission, declines, however, to create three new call categories: (1) Traditional billed calls (paid for by end users), (2) facility-paid calls, and (3) unbilled calls (for which carriers receive no compensation). The Commission finds the creation of these new reporting categories unnecessary and that the burdens associated with requiring providers to classify each call into one of these three new categories outweigh the potential benefits.

27. The Commission revises the relevant portions of the instructions to require providers to submit individual-facility data where multiple facilities are covered by a single contract. As the record reflects, providers with multi-facility contracts often merge or repeat the same data for several facilities covered by a single contract. Where the responsive data are available, ICS providers must submit individual data for each facility even if that facility is covered by the same contract as other facilities. The Commission declines, however, a request to require providers to submit separate, unredacted site commission data. Although certain site commission data may be publicly available, the Commission cannot properly prejudge potential provider requests for confidential treatment of other site commission data. Instead, any such requests will be evaluated in accordance with the Protective Order in this proceeding. Filings containing legitimate confidential information can be appropriately redacted and filed pursuant to the guidance and limitations set forth in the Protective Order and the standard set forth in section 0.459 of the Commission's rules.

28. The Commission also implements the proposal to allow ICS providers to elect whether to use the default weighted average cost of capital (WACC) of 9.75% or an alternative WACC. If an ICS provider chooses to use a higher alternative WACC, the provider must submit a narrative response fully documenting and justifying the alternative. The Commission reminds providers that if they elect to claim a WACC greater than 9.75% and do not fully document, explain, and justify their calculations, then WCB/OEA may apply the default WACC of 9.75% instead. The Commission agrees with the Public Interest Parties' argument that an adequate response requires providers to submit calculations and work papers as both are necessary to establish that the provider's alternative WACC estimate reflects the provider's own and a demonstrably comparable-group of firms' financial data and economic circumstances, the use of widely accepted methods to estimate debt and equity costs and capital

structure, and the collective risks of providing ICS, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service, as specified in the instructions.

C. General Revisions Related to the Adopted Instructions

1. Definitions

29. Accounting Entity, Affiliate, Business Segment, and Company. The Commission adopts the definitions of ''Accounting Entity,'' ''Affiliate,'' ''Business Segment,'' and ''Company'' set forth in the proposed instructions. Although the Commission appreciate concerns that these definitions could be read to allow selective reporting that would adversely affect the results of the data collection, as the Commission explains, the Commission finds it unnecessary to revise the definition of ''Company'' to mean '''the legal entity that contains the Accounting Entity.''' Investments and expenses to be assigned, attributed, or allocated to or among Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services are presumptively limited to those investments and expenses reflected in the existing financial reports that are routinely and specifically prepared for the accounting entity for management, shareholder, or creditor review. The provider may rebut this presumption with data and analysis but faces a high bar given the obvious incentives to shift investments and expenses to rate-regulated services. Although the Commission appreciates concerns that these definitions could be read to allow selective reporting that would adversely affect the results of the data collection, the Commission finds it unnecessary to revise the definition of ''Company'' to mean ''the legal entity that contains the Accounting Entity.'' As noted above, this data collection is not the appropriate vehicle to modify the Commission's existing rules. Accordingly, commenter suggestions that urge the Commission to change the definitions of terms contained in the Commission's rules are also outside the scope of this data collection.

30. Accordingly, the Commission adheres to the proposal to define ''Company'' as synonymous with ''Accounting Entity,'' which means ''the smallest group of separate Business Segments that collectively account for 100% of the Provider's ICS-Related Operations and ICS-related investments, expenses, and revenues.'' Together with ''Business Segment,'' these terms ground the cost-reporting process in existing financial reports, while allowing us to avoid the cost allocation issues and reporting issues that adversely impacted the Commission's earlier mandatory data collections. In contrast, the definition of ''Company'' suggested by one commenter would broaden the scope of the cost-reporting process significantly without improving cost-reporting results. If a calling services provider organizes its operations in a manner aimed at inflating its reported costs of providing calling services to incarcerated people, that fact should be apparent in the provider's response to the data collection.

31. Security Services. The Commission revises the proposed definition of ''Security Services'' to prevent an overinclusive reading of the term. The revised definition is as follows: ''Security Services means any security and surveillance system, product, or service that a Provider supplies to a Facility, including any such system, product, or service that allows Incarcerated Persons to make telephone calls as permitted by the Facility; helps the Facility ensure that Incarcerated Persons do not call persons they are not allowed to call; helps monitor and record on-going calls; or inspects and analyzes recorded calls. Security Services also include other related systems, products, and services, such as a voice biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning telephone calls. The classification of a system, product, or service as a Security Service does not mean that it is part of a Provider's ICS-Related Operations.'' Under the proposed definition, ''Security Services'' would include ''any security and surveillance system, product, or service that a Provider supplies to a Facility'' as well as ''any service that allows Incarcerated Persons to make telephone calls as permitted by the Facility.'' As commenters explain, this proposed definition could ''encompass a wide variety of non-security related services'' or ''would classify all ICS costs as 'security services.'' The Commission agrees that, without amendment, the definition could skew provider responses. The revised definition removes this ambiguity, and also addresses concerns that the proposed definition is unclear and potentially overbroad. For further clarity, the Commission also removes the last sentence from the proposed definition as unnecessary and potentially confusing, in accord with comments in the record. The related requests for information the Commission adopts ask providers to identify and describe supplied Security Services in the context of In-Kind Site Commissions or ICS-related Operations. ''ICS-Related Operations means the actions or tasks performed by the Provider or authorized personnel to deliver Inmate Calling Services and related Ancillary Services to Incarcerated Persons and those they call, including but not limited to billing, customer service, and other requirements as determined by contract or by law. It excludes all Site Commission payments, including In-Kind Site Commission payments.''

32. Revenue-Sharing Agreement. The Commission declines to adopt the suggestion that it narrow the definition of ''Revenue-Sharing Agreement'' so that it applies only to ''a contract for services to be rendered by an Affiliate or Third Party, which also provides for payments to the Provider.'' The Commission concludes that the proposed definition is tailored to identify the general relationship between the provider and the contracted party or parties within the specific context identified in each of the related information requests, including the scenarios discussed in the record. Because the definition encompasses agreements regarding the provision of ICS or any ancillary service that ''directly or indirectly'' result in payments to providers, it encompasses both the practices of concern identified in the record and any additional, as yet undisclosed, revenue sharing practices in which providers have engaged.

33. Site Commission-Related Definitions. The Commission also does not modify the definition of ''Monetary Site Commission'' to include site commissions that ''take the form of a payment in money or an equivalent accounting entry.'' Doing so would obscure the data regarding site commissions, rather than bring clarity to it. As proposed, the instructions intentionally delineate between monetary site commissions and in-kind site commissions by focusing on the actual exchange of money. This proposal would effectively reclassify an in-kind site commission, like the provision of certain equipment, as a monetary site commission, collapsing the distinction the Commission intends to capture between in-kind site commissions and monetary site commissions. The Commission does agree, however, with PPI's suggestion that it clarify that the definition of ''Contractually Prescribed Site Commissions'' excludes legally mandated site commission payments even when such legally mandated

payments are reflected in a contract. This clarification appropriately recognizes that a contract for the provision of inmate calling services may recite or incorporate state mandates for the payment of site commissions that are not the type of discretionary negotiated payments contemplated by the term ''Contractually Prescribed Site Commissions.''

34. Capital Expenses. The Commission finds it unnecessary to make the definition of ''Capital Expenses'' more comprehensive by specifically ''captur[ing] expenditures on intangible assets such as technology licenses o[r] expenses on software.'' The current definition already includes annual amounts related to the amortization of capitalized expenditures on such intangible assets. This clarification appropriately recognizes that a contract for the provision of inmate calling services may recite or incorporate state mandates for the payment of site commissions that are not the type of discretionary negotiated payments contemplated by the term ''Contractually Prescribed Site Commissions.''

35. Average Daily Population. On its own motion, the Commission revises the definition of ''Average Daily Population'' to make clear that data reported for that measure must reflect actual populations, rather than any estimate. A provider unable to provide exact ADP data must provide its best estimate and, in the Word template, indicate that fact and provide the basis for its estimate.

2. Adopting a Three-Year Reporting Period

36. The Commission expands the proposed reporting period from one year to three years for the entire Mandatory Data Collection, including the cost data, as supported by the record. This action revises the proposal to generally collect data for each calendar year from 2019 through 2021, but to limit the collection of cost data to only calendar year 2021. Commenters, including both service providers and public interest groups, convince us that collecting cost data for three years will help prevent atypical, one-time expenses from being considered normal company costs, which they argue is a potential downside to collecting only a single year's cost data. This potentiality becomes particularly acute if providers incurred large one-time costs related to COVID–19, as the record suggests may have happened. Additionally, the Commission finds that the difference in burden between providing one year versus three years of cost data is marginal and far outweighed by the benefits of collecting cost data for three years. The adoption of a three-year reporting period also accounts for providers that argue that data for the year 2021 is the most relevant and the best indicator of costs. The three-year reporting period the Commission adopts includes the year 2021 such that if that year proves most relevant, the collected information will speak for itself. Further, the Commission finds that adopting a consistent three-year period for all the data requests will reduce confusion among reporting providers, as well as include the one-year time period prior to any anomalous effects caused by the COVID–19 pandemic. In inviting comment on the proposed instructions and templates, the Commission asked commenters how it should ''require providers that track costs only on a contract level to respond.'' GTL offers no specific proposal for how the Commission could structure contract-level reporting to avoid the issues the Commission encountered in the Second Mandatory Data Collection. GTL argues that this average ''grossly underestimate[s]'' providers' response times for that data collection as outlined in that *Notice*. Instead of providing an alternative estimate, GTL simply points out that it provides calling services to over 1,900 facilities and that, even if it took only an hour per facility to respond to the data collection, GTL alone would spend over 1,900 hours preparing its response. The Commission rejects GTL's argument. As the Commission has recognized, GTL is the largest calling services provider, ''with an estimated market share approaching 50%.'' Given that market share, the Commission would expect that GTL's total response time would far exceed any industry average, regardless of the number of estimated hours. Nevertheless, the Commission will update its average burden estimate to account for the additional effort required to produce the additional two years of cost data that are now required and the other changes made in this Order. The Commission's revised estimate, which will be included in the subsequent PRA document related to this data collection, will reflect the likely burden of the data collection.

3. Rejecting Revisions to Financial Data Requests

37. The Commission adopts the proposed requests for financial data set forth in the Public Notice and accompanying draft instructions and template—including conformance with generally accepted accounting principles—with a few minor exceptions suggested by the record as reflected herein. GTL argues that the financial data requests are ''impossible to satisfy,'' are formatted specifically for dominant carriers, and are beyond the Commission's authority. The Commission disagrees. GTL fails to provide any specific explanation for why it would not be able to comply with the proposed request. GTL's claims are also contradicted by the comments of other providers, indicating that ICS providers ''already have access'' to the requested data, and that the requests are ''consistent with existing ICS provider recordkeeping practices.'' The Commission agrees with PPI that any purported similarity to accounting rules for dominant carriers is ''irrelevant,'' especially when corporations are ''frequently called upon to reformat [accounting] information for different reporting purposes.'' Finally, collecting this financial information is well within the Commission's statutory authority and the authority the Commission delegated to WCB/OEA for this collection.

38. The Commission declines one commenter's request that the Commission eliminate the proposed reporting concerning non-ICS services, as well as its suggestion that mandating such reporting is beyond the Commission's authority. Collecting the requested information regarding non-ICS services is essential if the Commission is to ensure that, consistent with section 201(b) of the Communications Act, the costs relied upon to set rates for regulated services—in this case, ICS and associated ancillary services—do not include the costs of nonregulated activities. Additionally, this information will help the Commission verify the accuracy and reasonableness of providers' cost allocations. Although the commenter complains of the burden involved in providing this information, the instructions enable providers to report non-ICS services' costs collectively, substantially reducing the burdens that would otherwise be associated with providing more granular information about the costs of nonregulated services. In addition, many rows of the data requests will not apply to non-ICS services, in which case providers only have to report amounts for relatively general categories such as ''Maintenance, repair, and engineering of site plant, equipment, and facilities,'' which should further limit the burden involved. At the same time, the Commission declines to broaden the financial data requests to include federal income taxes paid, because the

collection already requests that providers report ''[o]ther income tax-related adjustments.''

4. Adopting Cost Allocation Procedures as Proposed

39. The Commission adopts the cost allocation procedures as proposed in the Public Notice and decline to implement alternative proposals for the reasons that follow. As the Public Interest Parties recognize, ''[t]he Third MDC provides a detailed methodology for providers to implement the allocation consistently.'' The instructions require providers to fully document, explain, and justify all cost allocations they make. This already comprehensive requirement obviates the need to yield to record requests that the Commission provide examples and guidance regarding direct attribution, or that the Commission provide more detailed information on the methodology for such allocations. Other commenters seek revisions to the allocation of common costs relying on direct costs, either by allowing alternative methodologies of common cost allocation, or by suggesting that the Commission should consider whether, or when, additional common cost allocation metrics are appropriate. The Commission declines to modify the instructions requiring a direct cost allocation of common costs. While the Commission is aware that using direct costs to allocate common or indirect costs ''can be a problem if the direct costs are a very small share of total costs,'' the Commission notes that this cost allocation method is the last two steps in a hierarchy of methodologies. Thus, the Commission does not expect it to be used for a significant portion of any provider's costs, assuming each provider does its due diligence with respect to identifying and measuring the actual factors that drive its costs. Authorizing alternative approaches to the allocation of common costs would sacrifice the desired uniformity in the allocation process. The Commission similarly declines a request that it reorder the third and fourth cost allocation steps. The Commission finds no sound reason why the inversion of these two steps would be beneficial or efficient.

40. Other comments suggest adding a contract-level allocation step to the hierarchy of allocation instructions. However, the instructions already explain that contract-level costs that are not directly assignable to facilities are to be treated as shared costs and provide steps for allocating such shared costs. The Commission finds no reason to make any changes to these instructions. The Commission is also unpersuaded that an allocation methodology based upon ADP will result in improved cost attribution, as one of the key objectives of the data collection is to ascertain from the cost data how costs vary among facilities that have different ADPs.

5. Adopting Certain Revisions to Response Granularity

41. The Commission implements the proposal to require providers to submit data both at the company-wide level and at the correctional facility level. However, the Commission adjusts the reporting of operating expenses between the company-wide level and the facility level to ensure consistency in reporting of these expenses at all levels and to avoid imposing additional burdens on reporting providers. The Commission disagrees with commenters that argue that providers should be able to report cost information only at the contract level. The Commission finds that making such a change would substantially increase the likelihood of recreating the same data issues the Commission confronted in the context of the Second Mandatory Data Collection.

42. The Commission initially proposed an allocation of operating costs for facilities that differed from that sought at the company level. The record persuades us to revise the requirements on the allocation of operating costs among facilities to parallel the level of disaggregation required at the company level. As Securus explains, the proposed instructions would require 16 categories of operating expenses to be reported at the company level, but only four categories of operating expenses to be reported at the facility level. Securus explains that requiring similar levels of disaggregation for both company and facility data ''would assist the Commission in identifying the different cost drivers between larger and smaller facilities'' and ''help the Commission and interested parties understand and validate the cost-causative methodologies used.'' The Commission agrees that adopting a similar level of disaggregation for facility data as for company-wide data will yield more useful cost allocation results. In addition, requiring consolidation of accounts at the facility level appears to require an additional step for providers, thereby imposing an unnecessary burden. As the Commission seeks to maximize the benefits of the data collection while minimizing burdens to the extent possible, the Commission concludes that the same level of disaggregation should be required for both company-wide and facility-specific data. Considering that the Commission adopts facility-level disaggregation of operating expenses, the Commission clarifies that providers may use the same number of allocators they would have used to allocate expenses from the company-wide disaggregated accounts to the facility-level consolidated accounts. Thus, providers may use the same allocators for more than one cost category, instead of a separate allocator for each cost category. The proposed instructions and Excel template required: (a) 16 categories of operating expenses to be reported at the company-wide level (site commissions are included); (b) 15 to be reported at the company-wide, service specific level (site commissions are excluded); and (c) four to be reported at the facility-specific, ICS level (reflecting an aggregation of the company-wide, service specific categories). The Commission modifies these instructions and the template to require 15 categories of operating expenses to be reported at the facility-specific, ICS level. (Site commissions are excluded.)

43. The Commission declines to adopt GTL's proposal to permit providers to report information on a contract-only basis, rather than at the company and facility levels. GTL claims that reporting information at the company and facility levels would be ''directly contrary to the Commission's finding that 'many providers assess their inmate calling services operations on a contract-by-contract basis.''' The Commission disagrees. The Commission made this observation in connection with its analysis of the responses to the Second Mandatory Data Collection and identified contract-level reporting as one of the principal limitations in the reported data. In requiring the Third Mandatory Data Collection, the Commission directed WCB/OEA to ''incorporate lessons learned from the two prior data collections'' and to ''[e]nsure that the provider has directly assigned to specific contracts or facilities investments and expenses directly attributable to inmate calling services to the extent feasible.'' The decision to require facility-level reporting instead of contract-level reporting is a direct response to the Commission's directives to avoid a repeat of the problems that affected prior data collections. Accordingly, the Commission is unpersuaded that it should permit contract-level reporting, especially considering that other ICS providers support facility-level reporting.

6. Financial Reports

44. The Commission adopts the proposal to require all providers to

submit audited financial statements or reports, or similar documentation, for the reporting period, to the extent they have been produced in the ordinary course of business. Providers must either submit these reports for each year of the reporting period or certify that they have not produced such reports in the ordinary course of business.

7. Effective Date

45. The Commission's actions in this Order shall be effective on the date specified in a document to be published in the **Federal Register** announcing approval by the Office of Management and Budget (OMB).

46. Pursuant to the Commission's directive set forth in the 2021 ICS Order, responses to this Third Mandatory Data Collection will be due 120 days after WCB announces in a public document that OMB has approved the data collection.

IV. Procedural Matters

47. Supplemental Final Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Order.

48. Final Paperwork Reduction Act Analysis. The Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission has assessed the effects of the data collection on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to the collection, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

49. Congressional Review Act. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the CRA, 5 U.S.C. 804(3).

V. Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB/OEA) have prepared this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible significant economic impact on small entities by the policies and rules adopted in this Order pertaining to the forthcoming Third Mandatory Data Collection for inmate calling services (ICS). A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was included with a Public Notice seeking comment on proposals to implement the Third Mandatory Data Collection in the Commission's Inmate Calling Services proceeding. WCB/OEA sought written public comment on the proposals in that Notice, including comment on the Supplemental IRFA. WCB/OEA did not receive comments directed toward the IRFA. The Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Order and the Supplemental FRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Data Collection

2. In this Order, WCB/OEA adopt policies and specific requirements to implement the forthcoming Third Mandatory Data Collection for ICS. In the 2021 ICS Order, the Commission adopted a new data collection requirement. The Commission determined that this data collection would enable it to adopt permanent interstate and international rate caps, protect consumers against unjust and unreasonable ancillary service charges, and improve its continuing review of the inmate calling services marketplace.

3. Pursuant to their delegated authority, WCB/OEA have prepared instructions and a template for the Third Mandatory Data Collection and are issuing the Order to adopt all aspects of these documents.

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

4. WCB/OEA did not receive comments specifically addressing the rules and policies proposed in the Supplemental IRFA.

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

5. The Chief Counsel did not file any comments in response to the rules and policies proposed in the Supplemental IRFA.

D. Description and Estimate of the Number of Small Entities to Which the Third Mandatory Data Collection Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the Third Mandatory Data Collection. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. Regulatory Flexibility Analyses were incorporated in the 2020 ICS Notice, 2021 ICS Order, and the Third MDC Proposal document. In those analyses, the Commission described in detail the small entities that might be affected. Accordingly, in this Order, for the Supplemental FRFA, the Commission hereby includes by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

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

8. The Third Mandatory Data Collection requires ICS providers to submit, among other things, data and other information on calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, and ancillary fees. WCB/OEA estimate that approximately 20 ICS providers will be subject to this one-time reporting requirement. In the aggregate, WCB/OEA estimate that responses will take approximately 47,100 hours and cost approximately $418,570.

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

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

10. The Third Mandatory Data Collection is a one-time request and does not impose a recurring obligation on providers. Because the Commission's 2021 ICS Order requires all ICS providers to comply with the mandatory data collection, the collection will affect smaller as well as larger ICS providers. WCB/OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers and have considered the economic impact on small entities, as identified in comments filed in response to the Third MDC Proposal document and the Supplemental IRFA, in finalizing the instructions and the template for the Third Mandatory Data Collection. In response to the comments, WCB/OEA have refined certain aspects of the data collection, including by expanding the reporting period for cost data, revising certain proposed definitions, and reorganizing the manner in which providers report certain costs. These modifications avoid unduly burdening responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection.

G. Report to Congress

11. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

12. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 155(c), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 276, and 403, and the authority delegated pursuant to sections 0.21, 0.91, 0.291, 0.201(d), 0.271, 0.291 of the Commission's rules, 47 CFR 0.21, 0.91, 0.201(d), 0.271, 0.291, this Order *is adopted*.

13. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Lynne Engledow,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

Note: The following appendix, Third Mandatory Data Collection Instructions and Template, will not appear in the Code of Federal Regulations.

Third Mandatory Data Collection Instructions and Template

I. Data Collection Overview

In the *2021 ICS Order,* the Commission determined that a Third Mandatory Data Collection would enable it to adopt permanent interstate and international rate caps for inmate calling services (ICS) and to evaluate and, if warranted, revise the current Ancillary Service Charge caps for those services. The Commission delegated authority to the WCB/OEA to implement this Third Mandatory Data Collection, ''including determining and describing the types of information required related to providers' operations, costs, demand, and revenues.'' The Commission also delegated authority to WCB/OEA ''to require each provider to fully explain and justify each step of its costing process and, where [WCB/OEA] deem it appropriate, to specify the methodology the provider shall use in any or all of those steps.''

The Commission directed WCB/OEA to develop a template and instructions for the collection. The Commission also directed that WCB/OEA consider, in designing the data collection, various suggestions regarding data granularity, cost allocation, and specificity in definitions and instructions received from parties in response to the *2020 ICS Notice,* among other matters. Further, the Commission directed WCB/OEA to ''incorporate lessons learned from the two prior [ICS] data collections to ensure that [the Commission] collect[s], to the extent possible, uniform cost, demand, and revenue data from each provider.''

These instructions and the accompanying template are designed to implement the Commission's directives. The template consists of a Word document and Excel spreadsheets. For simplicity, we refer to these respective portions of the template as the Word template and the Excel template.

II. General Instructions

Our instructions first identify the entities which we require to respond to this data collection. We then review the information we require them to provide and describe the procedure for submitting the requisite responses.

Throughout these instructions, the terms ''you'' and ''your'' refer to any entities directed to respond to these data requests which qualify as Inmate Calling Service Providers as we define them below.

You may contact the Commission staff at *mandatorydatacollection@fcc.gov* if you have questions regarding whether your Company must file a data collection response or the requirements for such a response.

A. Who Must Submit Data

All ICS Providers, as defined in our rules and as further described below, must submit complete, accurate, and truthful responses to this data collection. See Part III, below, for the definition of ''ICS Provider.'' Each group of affiliated Providers shall respond as a single entity, regardless of the number of separately incorporated companies or other entities within that group that provide ICS. See Part III, below, for the definitions of ''Accounting Entity'' and ''Affiliates,'' which collectively make clear which entities must file responses to this Data Collection.

A Subcontractor is included as an entity acting as an ICS Provider if it partners with or serves an ICS Provider which holds a direct contractual relationship with a correctional authority, and also, for example, completes calls for ICS Customers, bills Customers for those calls, and retains the revenue from those calls. Subcontractors are therefore not exempted from the definition of an ICS Provider on the grounds that they lack a direct contractual relationship with a correctional authority. Alternatively, where a Subcontractor completes calls but the ICS Provider bills Customers for those calls and then pays the Subcontractor, that Subcontractor may

also meet the definition of an ICS Provider. In contrast, an entity that provides billing and collection for Calling Services provided by a separate entity and remits those revenues may not, without more, meet the definition of an ICS Provider.

Providers (and all Subcontractors thereof who meet the definition herein) must complete all portions of this data collection unless otherwise indicated. Section II.C below provides instructions as to how certain data shall be reported.

B. What Must Be Submitted

You must fully and completely respond to each request for information in this data collection by using the Word and Excel templates attached to these instructions. Providers must report their information according to the best information in their possession, custody, or control.

Your full response shall consist of several parts:

(1) A Word document containing responses that require a narrative explanation (see Appendix A to these instructions);

(2) An Excel spreadsheet containing responses that indicate specific numbers, percentages, and or information (see Appendix B to these instructions);

(3) An audited financial statement or report for each Year from 2019 through 2021; and

(4) A signed certification of truthfulness, accuracy, and completeness (see Appendix C to these instructions).

The Word and Excel templates and any additional spreadsheets must be submitted in machine-readable and manipulatable formats. As indicated, you also must submit an audited financial statement or report for each Year from 2019 through 2021, or similar documentation, to the extent they have been produced in the ordinary course of business. Additionally, all responses must be accompanied by a certification by an officer of the Provider that, based on information and belief formed after reasonable inquiry, the statements and information contained in the submission are true, accurate, and complete. You must complete the certification form provided in Appendix C before submitting your response. Submissions made without a completed certification form will be rejected and returned for correction and resubmission.

We caution Providers that they must proceed in good faith and with absolute candor in responding to this data collection. We also caution that any failure to timely file an accurate, complete, and truthful response to this data collection may subject the Provider to sanctions, including, but not limited to, monetary forfeitures. *See* 47 U.S.C. 502, 503(b). Willful false statements in responses to this data collection also are punishable by fine or imprisonment under 18 U.S.C. 1001.

As a general matter, these instructions direct you to enter your responses to requests for certain information or numbers at specific places in these appendices. Where these instructions require you to provide the workpapers, formulas, calculations, or data underlying your responses, report and display the required information as clearly and succinctly as possible.

Narrative responses are to be provided in the Word template. Use that template to provide any additional information needed to ensure that your response is full and complete, and to identify and explain any caveats associated with your response. The Word template shall also include formulas, explanations, and appropriate references for calculations, where necessary, including any explanations needed to make your entries on the Excel template transparent and understandable.

Unless otherwise stated, use the Excel template to provide your responses to the inquiries that follow. As a general matter, your entries on that template will be for specific numbers or percentages (*e.g.,* a Facility's Average Daily Population) or discrete information (*e.g.,* a Facility's geographical coordinates). The Excel template has formulas in certain cells that operate in accordance with these instructions and use data you enter in other cells to facilitate a complete reporting of the required data. Data that you are required to ''report'' include both the data that you enter in the cells and the data that are automatically generated by the Excel formulas. The Excel template uses ''N/A'' to identify cells in which no data are to be reported. Following the same format, you should add additional rows or columns to this template as necessary to complete your responses.

Where indicated, please provide your responses for the three-year Reporting Period—from January 1, 2019, to December 31, 2021. Where inquiries do not specify a format for the Reporting Period, answer the question on a year-by-year basis, rather than in the aggregate for the Reporting Period.

You must submit a valid entry on the designated template in response to each request in this data collection. If a request does not apply to your Company, enter ''N/A'' in the appropriate field, and use the Word document to fully explain the reasons for this response. If your responses are deemed incomplete or are not submitted in the required format, your filing may be rejected and returned to you for correction and resubmission.

C. Filing Deadline and Submission

The Commission will submit this data collection, including all required forms, to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Within seven business days of our receiving that approval, we will issue a Public Notice announcing that approval and setting the deadline by which you must submit your response to this data collection, which will be 120 days after we issue the Public Notice announcing OMB approval. We also will publish a notice in the **Federal Register** announcing OMB's approval of the data collection and the due date for your response.

You must submit public versions of your response by filing and certifying the completed templates and certification form electronically, using the Commission's Electronic Comment Filing System (ECFS), by accessing the ECFS at *https://www.fcc.gov/ecfs/*.

You may file any information that you believe should be afforded confidential treatment pursuant to the guidance and limitations in the *Protective Order* in this proceeding and by adhering to the standard set forth in section 0.459(b) of the Commission's rules. You may access the *Protective Order* through this link: *https://apps.fcc.gov/edocs_public/attachmatch/DA-13-2434A1.pdf*. Confidential versions of the reports must be submitted to the Secretary's office using the original Word and Excel templates provided by the Commission and in a machine-readable and manipulatable format. You must also provide courtesy copies of the confidential filing to WCB/OEA via email at *mandatorydatacollection@fcc.gov*.

If your response is not completed properly, it may be rejected and/or returned to you. For further information and any questions on completing your response, please contact Erik Raven-Hansen, Wireline Competition Bureau, Pricing Policy Division, at 202–418–1532 or at *Erik.Raven-Hansen@fcc.gov,* or Richard Kwiatkowski, Office of Economics and Analytics, Economic Analysis Division, at 202–418–1383 or at *Richard.Kwiatkowski@fcc.gov*.

III. Relevant Definitions

Accounting Entity means the smallest group of separate Business Segments that collectively account for 100% of the

Provider's ICS-Related Operations and ICS-related investments, expenses, and revenues.

Admissions means the number of Incarcerated Persons booked into and housed in a Facility by formal legal documents and the authority of the courts or other official agency, including repeat offenders booked on new charges as well as persons sentenced to weekend programs who enter the Facility for the first time. It excludes Incarcerated Persons reentering the Facility after an escape, work release, medical appointment, treatment facility appointment, or bail and court appearance.

Affiliates means any two or more companies, partnerships, or other legal entities where (a) one entity directly or indirectly owns or controls the other or others, (b) a Third Party controls or has the power to control both or all, (c) the entities share common ownership or have interlocking directorates, or (d) the entities share employees, equipment, and/or facilities. For purposes of this definition, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10%.

Affiliate Group means the Company and its ICS and non-ICS Affiliates.

Ancillary Service Charge means any charge Consumers may be assessed for, or in connection with, the interstate or international use of Inmate Calling Services that is not included in the per-minute charges assessed for such individual calls. Ancillary Service Charges that may be assessed are limited only to those listed in 47 CFR 64.6000(a)(1)-(5) and consist of Automated Payment Fees, Live Agent Fees, Paper Bill/Statement Fees, Fees for Single-Call and Related Services, and Third-Party Financial Transaction Fees. All other Ancillary Service Charges are prohibited in connection with interstate and international Inmate Calling Services. For purposes of this definition, ''interstate'' includes any jurisdictionally mixed charge, as defined in 47 CFR 64.6000(u).

Ancillary Services means Permissible Ancillary Services and Other Ancillary Services.

Annual Total Expenses means the sum of annual Operating Expenses and annual Capital Expenses.

Automated Payment Fees means credit card payment fees, debit card payment fees, and bill processing fees, including fees for payments made by interactive voice response (IVR), through the internet, or by use of an Incarcerated Person Kiosk.

Automated Payment Service means any service providing Customers of Inmate Calling Services with credit card payment, debit card payment, and bill processing services, including enabling payments by interactive voice response (IVR), web, or Incarcerated Person Kiosk.

Average Daily Population or *ADP* means the sum of all Incarcerated Persons in a Facility for each day of a Year, divided by the number of days in the Year.

Billed Calls means the number of Inmate Calling Services calls supplied during a Year for which payment is demanded.

Billed Uses means the number of times Automated Payment Service, Live Agent Service, or Paper Bill/Statement Service is put into action during a Year and for which payment is demanded.

Billed Transactions means the number of discrete instances where a seller supplies Single-Call and Related Service or Third-Party Financial Transaction Service and a buyer agrees to pay a price for that service.

Billed Minutes means the number of Inmate Calling Services minutes supplied during a Year for which payment is demanded.

Billed Revenues means gross sales, without adjustment for uncollectable accounts or expenses related to producing these sales, derived from the number of units of a service supplied during a Year for which payment is demanded.

Business Segment means a component of a Company that generates its own revenues and creates its own products, product lines, or services and for which a financial report is routinely prepared for management, shareholder, or creditor review.

Capital Expenses means the sum of (a) the Return that debt, preferred stock, and equity investors require; (b) interest paid on customer prepayments or deposits; (c) depreciation expense; (d) amortization expense; and (e) federal and state income tax expense attributable to the fraction of the Return attributable to equity holders.

Cash Working Capital means the average investor-supplied capital a firm needs to fund its day-to-day operations.

Company means the Accounting Entity unless otherwise indicated.

Consumer means the party paying a Provider of Inmate Calling Services.

Contractually Prescribed Site Commission means a Site Commission payment, other than a Legally Mandated Site Commission payment, required pursuant to a contract negotiated between a Facility and a Provider.

Customer means the Incarcerated Person or the person who pays for ICS if that person is not the Incarcerated Person.

Discretionary Tax or *Discretionary Fee* means a fee that a Provider must remit to federal, state, or local governments and may, but is not required to, recover it from Customers, including but not limited to fees for the Universal Service Fund.

Facility means a Prison or Jail as those terms are defined elsewhere in this document.

Fees for Single-Call and Related Services means billing arrangements whereby an Incarcerated Person's collect calls are billed through a Third Party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account.

Fixed Site Commission means a Site Commission that is assessed or paid without regard to ICS usage or revenues. Fixed Site Commissions include, but are not limited to, minimum annual guarantee payments, other lump-sum payments, and payments in kind that Providers make pursuant to ICS contracts.

Gross Investment means the book value of an asset prior to subtracting accumulated depreciation or amortization.

Incarcerated Person means a person detained in a Prison or Jail, regardless of the duration of the detention.

Incarcerated Person Kiosk means a self-service transaction machine that a Provider of Inmate Calling Services owns or leases and makes available to Incarcerated Persons at a Facility to obtain ICS-Related Services, such as obtaining a calling card or depositing money in a prepaid account.

Incarcerated Person Telephone means a telephone instrument or other device capable of initiating telephone calls and set aside by a Facility for use by Incarcerated Persons.

Inmate Calling Services, Calling Services, and *ICS* mean a service that allows Incarcerated Persons to make calls to individuals outside the Facility where the Incarcerated Person is being held, regardless of the technology used to deliver the service.

ICS-Related Operations means the actions or tasks performed by the Provider or authorized personnel to deliver Inmate Calling Services and related Ancillary Services to Incarcerated Persons and those they call, including but not limited to billing, customer service, and other requirements as determined by contract or by law. It excludes all Site Commission payments, including In-Kind Site Commission payments.

ICS-Related Products and/or Services means any hardware, software,

applications, devices, products, or services used by a Provider or under a Provider's direction as part of its ICS-Related Operations. ICS-Related Products and/or Services also may support a Company's non-ICS Products and Services.

In-Kind Site Commission means a Site Commission that does not take the form of a Monetary Site Commission.

Intrastate Communication means any communication that originates and terminates in the same state, territory, or possession of the United States (other than the Canal Zone), or the District of Columbia.

International Communication means a communication or transmission from any state, territory, or possession of the United States, or the District of Columbia to points outside the United States.

Interstate Communication means, pursuant to 47 U.S.C. 153(28), communication or transmission (a) from any state, territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other state, territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (b) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (c) between points within the United States but through a foreign country. Interstate Communication shall not, for purposes of these instructions, include wire or radio communication between points in the same state, territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a state commission.

Jail means a facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are: (a) Awaiting adjudication of criminal charges; (b) post-conviction and committed to confinement for sentences of one year or less; or (c) post-conviction and awaiting transfer to another facility. The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately owned and operated facilities primarily engaged in housing city, county or regional Incarcerated Persons; facilities used to detain individuals operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities.

Legally Mandated Site Commission means a Site Commission payment required by state statutes or laws and regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment such as by a state public utility commission or similar regulatory body with jurisdiction to establish Inmate Calling Services rates, terms, and conditions and that operate independently of the contracting process between Facilities and Providers.

Live Agent Fee means a fee associated with the optional use of a live operator to complete Inmate Calling Services Transactions.

Live Agent Service means providing Customers of Inmate Calling Services the optional use of a live operator to complete Inmate Calling Services Transactions.

Mandatory Tax or *Mandatory Fee* means a fee that a Provider is required to collect directly from Customers and remit to federal, state, or local governments.

Maximum Call Duration means the maximum limit, if any, that a Provider or Facility imposes on the length of ICS calls from a Facility.

Monetary Site Commission means a Site Commission that takes the form of a monetary payment.

Net Capital Stock means Gross Investment in assets, net of accumulated depreciation and amortization, accumulated deferred federal and state income taxes, and customer prepayments or deposits, plus an allowance for Cash Working Capital.

Net Investment means the book value of an asset after subtracting accumulated depreciation or amortization.

Operating Expenses means recurring expenses incurred to supply a service on a continuous basis, including but not limited to maintenance and repair of plant, equipment, and facilities; billing, collection, and customer care; general and administrative expense; other overhead expense; tax expense other than income tax expense; bad debt expense; and the Inmate Calling Service-specific expenses specified in this data request.

Other Ancillary Services means an ancillary service that is not a Permissible Ancillary Service.

Paper Bill/Statement Fees means fees associated with providing Customers of Inmate Calling Services an optional paper billing statement.

Paper Bill/Statement Service means providing Customers of Inmate Calling Services an optional paper billing statement.

Permissible Ancillary Services means Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Services, as defined in Part 64 of the Commission's rules and these instructions.

Prison means a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of Jail but in which the majority of Incarcerated Persons are post-conviction or are committed to confinement for sentences of longer than one year.

Provider, ICS Provider, and *Provider of Inmate Calling Services* mean any communications service provider that provides Inmate Calling Services, regardless of the technology used, as defined in 47 CFR 64.6000(s). This definition includes all entities acting as Subcontractors as defined below, to the extent that their activities otherwise include the provision of Inmate Calling Services.

Releases means the number of Incarcerated Persons released after a period of confinement (*e.g.,* sentence completion, bail or bond releases, other pretrial releases, transfers to other jurisdictions, and deaths). It includes Incarcerated Persons who have completed weekend programs and are leaving the Facility for the last time. It excludes temporary discharges, such as discharges for work, medical or treatment appointments, court appearances, furloughs, and day reporting.

Reporting Period means the three-year period from January 1, 2019, to December 31, 2021. Where inquiries do not specify a format for reporting, provide responses for each year of the Reporting Period.

Return means the product of a Company's Net Capital Stock and its Weighted Average Cost of Capital.

Revenue-Sharing Agreement means any agreement, whether express, implied, written, or oral between a Provider or any Affiliate and a Third Party, such as a financial institution, or between a Provider and any of its Affiliates that, over the course of the agreement, directly or indirectly results in the payment of all or part of the revenue received from the provision of ICS or any Ancillary Service to the other party to the agreement.

Security Services means any security and surveillance system, product, or

service that a Provider supplies to a Facility, including any such system, product, or service that allows Incarcerated Persons to make telephone calls as permitted by the Facility; helps the Facility ensure that Incarcerated Persons do not call persons they are not allowed to call; helps monitor and record on-going calls; or inspects and analyzes recorded calls. Security Services also include other related systems, products, and services, such as a voice biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning telephone calls. The classification of a system, product, or service as a Security Service does not mean that it is part of a Provider's ICS-Related Operations.

Single-Call and Related Services means billing arrangements whereby an Incarcerated Person's collect calls are billed through a Third Party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services.

Site Commissions means any form of monetary payment, in kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or Affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide ICS, a governmental agency that oversees a Facility, the city, the county, or state where a Facility is located, or an agent of any such Facility.

Subcontractor means an entity that provides ICS to a Facility and has a contract or other arrangement with another Provider for provision of ICS to that Facility. A Subcontractor need not have a contractual relationship with the Facility.

Third Party means an entity that is not a Provider, an Affiliate of a Provider, or a Facility.

Third-Party Financial Transaction Fees means the exact fees, with no markup, that Providers of Inmate Calling Services are charged by Third Parties to transfer money or process financial transactions to facilitate a Customer's ability to make account payments via a Third Party.

Third-Party Financial Transaction Services means the transfer of money or the processing of financial transactions to facilitate a Customer's ability to make account payments via a Third Party.

Unbilled Calls means the number of Inmate Calling Services calls supplied during a Year for which payment is not demanded.

Unbilled Minutes, Unbilled Minutes of Use, and *Unbilled MOU* mean the number of Inmate Calling Services minutes supplied during a Year for which payment is not demanded.

Variable Site Commissions means Site Commissions that are assessed on a per-unit basis, such as a per-minute basis, percentage of ICS revenue, or number of ICS phones at a Facility.

Weekly Turnover Rate means the percentage calculated by subtracting the average number of weekly Releases during a Year from the average number of weekly Admissions during that Year and then dividing the resulting number by the Average Daily Population for that Year.

Weighted Average Cost of Capital means the sum of the cost of equity, the cost of preferred stock, and the cost of debt, each expressed as an annual percentage rate and weighted by its proportion in the capital structure.

Year means a calendar year, from January 1 through December 31 of any given year.

IV. Required Information

This Part sets forth the information you must provide in your response to this data collection. In some cases, the data are to be reported on the attached Word template, while other questions require a narrative response on the Excel template. In general, this Part proceeds from the general (Company-level data) to the specific (Facility-level data).

This Part begins by asking you to provide general information about your Company, including information pertaining to your ICS-Related Operations. Next, we direct you to provide financial data and related information at the Company level. We then direct you to disaggregate that financial information into service-specific categories and provide detailed instructions regarding cost allocation in connection with this step. We also instruct you how to report data where a Provider has an agreement with another entity for the provision of ICS. Next, we require you to report Company-level Ancillary Services and Site Commission data, followed by data regarding transactions with Affiliates. Finally, following the instructions for reporting Company-level data, we direct you to report certain financial information at the Facility level.

A. General Information

This section directs you to provide general information and data about your Company and its Affiliates, among other matters, in total for the Reporting Period, unless otherwise specified.

(1) *Company Name:* Enter the Company's name.

(2) *Accounting Entity:* Enter the name of each corporation, partnership, or other legal entity within the Accounting Entity.

(3) *Contact Person:* Enter the name, title, email address, and phone number of the person whom the Commission may contact to inquire about the Company's response to the collection.

(4) *Holding Company Name:* Enter the name of Company's ultimate parent, if any.

(5) *Filing Date:* Enter the filing date using the following format: ''MM/DD/YYYY'' to indicate the month, day, and year.

(6) *Headquarters Address:* Enter the physical address where the Company's headquarters are located.

(7) *Publicly Listed:* Identify whether the Company is a corporation or part of a corporation whose ownership is dispersed among the general public in many shares of stock which are freely traded on a stock exchange or in over-the-counter markets.

(8) *ICS-Related Services:* List all ICS-Related Services, including any Ancillary Services, that the Company provided at or for Facilities, or to Incarcerated Persons or those they call, during the Reporting Period. List all such services even if the Company only provided them at some Facilities.

(9) *Non-ICS Business Segments:*

(a) List all non-ICS Business Segments that the Company engaged in during the Reporting Period.

(b) Provide the Billed Revenues for each listed Business Segment during each Year of the Reporting Period.

(c) In the Word template, describe generally the operations of each listed non-ICS Business Segment.

(d) List all non-ICS Business Segments the Company or an Affiliate provided at or for Facilities, or to Incarcerated Persons or those they call, during the Reporting Period. List all such Business Segments even if the Company or Affiliate provided them only at some Facilities.

(e) In the Word template, describe in detail all non-ICS Business Segments the Company or an Affiliate provided at or for Facilities, or to Incarcerated Persons or those they call, during the Reporting Period.

(f) In the Word template, describe in detail how, if at all, the Company's ICS Business Segments and non-ICS Business Segments interact with each other.

(10) *Assets:*

(a) List each type of asset that the Company used in its ICS-Related Operations during the Reporting Period.

Exclude any type of asset whose Net Investment is less than 5% of the Company's total Net Investment.

(b) Provide the Net Investment in each listed type of asset as of December 31, 2021.

(c) List each ICS-Related Product or Service that each listed type of asset supported.

(d) List each non-ICS-Related Product or Service, if any, that each listed type of asset supported.

(11) *Non-ICS Affiliates:* List the names of all of the Company's non-ICS Affiliates during the Reporting Period.

(12) *Non-ICS Affiliates' Annual Revenues:* Enter total Billed Revenues for each Year of the Reporting Period.

(13) *Non-ICS Affiliates' Business Segments:*

(a) List all Business Segments in which non-ICS Affiliates engaged during the Reporting Period.

(b) Identify each non-ICS Affiliate that participated in the supply of each Business Segment on your list.

(14) *Non-ICS Affiliates' Annual Revenues by Business Segments:* Enter total Billed Revenues for each Year of the Reporting Period by each non-ICS Affiliate for each Business Segment on your list.

(15) *Affiliate Transactions:* List all types of assets and services that the Company obtained from a non-ICS Affiliate that were used in the provision of ICS-Related Services during the Reporting Period. For each type of asset and service that you list, identify for each Year of the Reporting Period:

(a) Each non-ICS Affiliate that provided those assets or services;

(b) The amounts the Company paid its non-ICS Affiliates for those assets and services; and

(c) The non-ICS Affiliates' Net Investment in those assets and the Annual Total Expenses incurred to provide those services.

(16) *Accounting and Record Keeping Systems:* In the Word template, describe in detail the Accounting Entity's accounting and record-keeping systems.

(17) *Mandatory Data Collection Response:* In the Word template, provide an overview of how the Company used its accounting and record-keeping system to respond to this Mandatory Data Collection. As part of this overview, explain the process by which the Company used data from income statements, balance sheets, general ledger, subledger, journals, department, division, or other organization group accounts or subaccounts, and other records or sources of financial data to develop, compile, assign, attribute, allocate or report Company-wide, service-specific, and Facility-specific revenues, investments, and expenses, as required by this Mandatory Data Collection. Identify the sources for all depreciation and amortization schedules or asset life projections used to determine the amount of depreciation and amortization expenses reported and how these expenses are derived using these schedules and projections or other methods in lieu of or in combination with these schedules and projections. Explain how Company-wide, service-specific, Facility-specific, department, division, or other organization group data are used to determine how costs are incurred in order to assign, attribute, or allocate investments and expenses, as required by this Mandatory Data Collection, including, for example, data as to the number of calls or call minutes, ADP, headcounts, labor hours, or salaries; computer processing, electronic equipment or other inside or outside plant equipment, circuit, and electric power use or capacity; internal or external maintenance or computer-center help desk requests, tickets, orders or dispatch numbers; and purchase orders, transactions, or other measures of resource use and cost-causation.

(18) *Representative Information:* In the Word template, address in detail whether the information collected though the data collection will be representative of the Company's future ICS-Related Operation given the effects of the COVID–19 pandemic on those operations during the Reporting Period. Identify for the two-year period January 1, 2022, to December 31, 2023, any specific known and measurable changes to the Company's ICS-related investments, expenses, revenues, and demand that are not reflected in the data collected through this data collection.

(19) *Sources:* In the Word template, identify the source for any data or any document included in or relied upon in your response.

B. Overview Information

This section provides an overview of your ICS-Related Operations by incorporating information from other sections of your Excel template. You should first enter the data required in those other portions into that template. Once you do that, the data required for this section will automatically be entered into this portion of the template. All of those data will be at the Accounting Entity level.

(1) *Company Name*

(2) *Facilities*

(a) Number of Facilities

(b) Number of Prisons

(c) Number of Jails with ADP of 1,000 and above

(d) Number of Jails with ADP below 1,000

(e) Number of contracts

(f) Number of Prison contracts

(g) Number of Jail contracts

(3) *Annual Total Expenses for each Year of the Reporting Period for:*

(a) Inmate Calling Services

(b) Automated Payment Service

(c) Live Agent Service

(d) Paper Bill/Statement Service

(4) *Revenues during each Year of the Reporting Period for:*

(a) Inmate Calling Services

(b) Permissible Ancillary Services

(c) Other Ancillary Services

(d) Non-ICS Products and Services

(5) *Site Commissions paid during each Year of the Reporting Period:*

(a) Total Site Commissions

(i) Total Monetary Site Commissions

(ii) Total In-Kind Site Commissions

(b) Legally Mandated Site Commissions

(c) Total Contractually Prescribed Site Commissions

C. Company-Wide Information

This section seeks general financial data and other information about the Company and directs you to determine the Annual Total Expenses the Company incurs to provide Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service during the Reporting Period.

1. Overall Financial Information

This subsection directs you to provide financial data and other information in the aggregate for the entire Company (*i.e.,* Accounting Entity). All financial data must comply with generally accepted accounting principles (GAAP). The carrying value of all assets, both tangible and intangible, shall reflect the results of the most recent impairment testing, and any adjustments required to account for any impairment loss shall be separately identified. In the Word template, explain in detail the process the Company used to comply with this requirement and provide any additional information needed to make that process fully transparent and understandable. Alternatively, explain in detail in the Word template why an impairment test is not now necessary, when impairment testing normally occurs under Company policy, and identify with specificity any accounting adjustments that were made at the time of the most recent impairment testing.

(1) *Annual Revenues:* Enter the total Billed Revenues for the Accounting Entity for Inmate Calling Services for each Year of the Reporting Period.

(2) *Investment and Expense Data:* Provide the following investment and

expense data in the aggregate for the Accounting Entity for the Reporting Period:

(a) *Capital Assets:* Report year-end amounts for each Year of the Reporting Period for each of the items specified below. Report amounts for items (i), (ii) or (iii), and (iv) separately for each of the following types of assets: (aa) Tangible assets; (bb) capitalized research and development; (cc) purchased software; (dd) internally developed software; (ee) trademarks; (ff) other identifiable intangible assets; and (gg) goodwill. Report a single amount for each of items (v), (vi), and (vii).

(i) Gross Investment;

(ii) Accumulated depreciation;

(iii) Accumulated amortization;

(iv) Net Investment;

(v) Accumulated deferred federal income taxes;

(vi) Accumulated deferred state income taxes; and

(vii) Customer prepayments or deposits.

(b) *Capital Expenses:* Report the annual amount for each Year of the Reporting Period for each of the items specified below. Report amounts for items (i) or (ii) separately for each of the following types of assets: (aa) Tangible assets; (bb) capitalized research and development; (cc) purchased software; (dd) internally developed software; (ee) trademarks; (ff) other identifiable intangible assets; and (gg) goodwill. Report a single amount for each of items (iii), (iv), and (v).

(i) Depreciation;

(ii) Amortization;

(iii) Interest other than interest paid on customer prepayments or deposits;

(iv) Interest paid on customer prepayments or deposits; and

(v) Other income tax-related adjustments.

(c) *Operating Expenses:* Report the annual amount for each Year of the Reporting Period for each of the items specified below. Each expense must be reported for a particular category; for example, do not report expense incurred for termination of International Communication as an expense incurred for Interstate and Intrastate Communication. Exclude any charges for asset impairment loss.

(i) Maintenance, repair, and engineering of site plant, equipment, and facilities;

(ii) Origination, switching, and transporting of Interstate, International and Intrastate Communication and termination of Interstate and Intrastate Communication;

(iii) Termination of International Communication;

(iv) Field service;

(v) Network operations;

(vi) Call center;

(vii) Data center;

(viii) Security Services relating to the Company's ICS-Related Operations, non-ICS Operations, or both;

(ix) Payment of Site Commissions;

(x) Billing, collection, client management, and customer care;

(xi) Sales and marketing;

(xii) General and administrative;

(xiii) Other overhead;

(xiv) Taxes other than income taxes;

(xv) Transactions related to mergers and acquisitions; and

(xvi) Bad debt.

(d) *Income Tax Rates:* Report separately for each Year of the Reporting Period each state income tax rate applicable to the Company. Report total Billed ICS Revenues separately for each state. The Excel template uses these reported data to calculate an ICS-Related Operations revenue-weighted average of the individual state income tax rates (*i.e.,* the sum of the products of each state tax rate multiplied by the percentage of the Company's total Billed ICS Revenues derived from ICS supplied at Facilities located in each corresponding state). The result of this calculation is used to calculate state income tax expense reported separately for specific services as instructed below.

2. Service-Specific Financial Information

The preceding subsection instructs you to provide financial information at the Company level. We now require you to determine the Annual Total Expenses the Company incurs to provide Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service for each Year of the Reporting Period. This process involves several steps.

First, we instruct you to assign, attribute, or allocate the reported Company-wide investments and expenses (without separation between federal and state jurisdictions) among Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services in accordance with the cost allocation instructions set forth below. We also instruct you to calculate federal and state income taxes for Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service. We do not require the reporting of Company-wide federal and state income tax expenses or the reporting of these expenses for Other Ancillary Services or non-ICS Services. We also do not require the reporting of Company-wide amounts for Cash Working Capital, Net Capital Stock, or Return or the reporting of these items for Other Ancillary Services or non-ICS Services.

We next instruct you to provide the results of your cost assignments, attributions, and allocations separately for Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services, which shall include amounts for investments, Capital Expenses, and Operating Expenses. We also instruct you to report your federal and state income tax calculations for Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service.

We then require you to make two elections. We first instruct you to elect whether to use the default Weighted Average Cost of Capital or an alternative Weighted Average Cost of Capital. We then instruct you to elect whether to include an allowance for Cash Working Capital. If you elect an alternative Weighted Average Cost of Capital greater than 9.75% or include an allowance for Cash Working Capital, we require you to report the components of those elections.

We instruct you to provide the Company's Annual Total Expenses (without separation between federal and state jurisdictions) of providing Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service and to make certain elections relating to adjustments to Annual Total Expenses. Finally, we also instruct you to elect whether to adjust the Company's Annual Total Expenses and thus to report Annual Total Expenses for the federal jurisdiction alone (covering both Interstate and International Communications), either to recognize any cost differentials between interstate/international Inmate Calling Services and intrastate Inmate Calling Services that should be reflected in an interstate rate cap or for any other reason.

a. Cost Allocation Instructions

You must assign or allocate Company-wide investments and expenses (without separation between federal and state jurisdictions) among Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services using the hierarchy of methods specified below. For purposes of these cost allocation instructions, Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary

Services, and non-ICS Services are each a separate ''service.'' Also, any costs the Company incurs in providing Single-Call and Related Services or Third-Party Financial Transaction Services shall be included in its Inmate Calling Services costs.

(1) First, to the extent possible, directly assign investments used exclusively to provide a particular service to that service; likewise, to the extent possible, directly assign expenses incurred exclusively to provide a particular service to that service. Calculate federal and state income taxes separately for Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service as specified in items 7 and 8 below.

(2) Second, group shared investments and expenses into shared investment and expense categories based on business function, activity, or task. Group common investments and expenses into common investment and expense categories based on business function, activity, or task.

(a) Any investments and expenses that are not directly assignable to a specific service are shared or common investments and expenses.

(b) Shared investments are for assets used exclusively to supply a specific subset of services that are not assignable or attributable to a particular service. Shared expenses are expenses incurred solely to supply a specific subset of services that are not assignable or attributable to a specific service.

(c) Common investments are for assets not assignable or attributable to a specific service or subset of services. Common expenses are expenses that are not assignable or attributable to a specific service or subset of services.

(3) Third, to the extent possible, directly attribute categories of shared investments and expenses, and categories of common investments and expenses, to particular services based on direct analysis of factors that cause a particular business function, activity, or task and thus investments or expenses to increase or decrease.

(4) Fourth, where neither direct assignment nor direct attribution is possible, allocate categories of shared investments and expenses, and categories of common investments and expenses, to particular services based on an indirect, cost-causative link to another investment and expense or another investment or expense category (or group of categories) for which direct assignment or attribution is possible.

(5) Fifth, where none of the methods described above is possible, allocate categories of shared investments and expenses to the particular services that share the investments and expenses in proportion to each service's share of the total of all investments or expenses already directly assigned or attributed to these particular services. Allocate categories of common investments and expenses to particular services in proportion to each service's share of the total of all investments or expenses already directly assigned or attributed to all services.

(6) The sums of the investment and expense amounts assigned to, attributed to, or allocated among Inmate Calling Service, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services shall equal the total investment and expense amounts respectively reported for the Company above (excluding federal and state income taxes, Cash Working Capital and Net Capital Stock, which are only reported for Inmate Calling Service, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service).

(7) *Federal income taxes:* First, subtract reported interest expense other than interest paid on customer prepayments or deposits (and any amount reported for other income tax-related adjustments) from Return to determine federal taxable income. Second, divide the federal income tax rate by 1 minus the federal income tax rate to determine a federal income tax gross-up factor. Third, multiply the federal income tax gross-up factor by federal taxable income to determine the amount of federal income tax to report.

(8) *State income taxes:* First, add the portion of federal income tax not deductible for state income tax purposes to federal taxable income to determine state taxable income. Second, divide the weighted average of the individual state income tax rates by 1 minus the weighted average of the individual state income tax rates to determine a state income tax gross-up factor. Third, multiply the state income tax gross-up factor by state taxable income to determine the amount of state income tax to report.

(9) Fully document, explain, and justify all cost assignments, attributions, and allocations using the Word template and submit additional workpapers developed using Excel spreadsheets.

b. Cost Allocation Results

Report the results of your cost assignments, attributions, and allocations separately for Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services on the Excel template, as specified below. Report your federal and state income tax calculations separately for Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service on the Excel template, as specified below.

(1) *Capital Assets:* Report the year-end amount for each Year of the Reporting Period for each of the items specified below. Report amounts for items (a), (b) or (c), and (d) separately for each of the following types of assets: (i) Tangible assets; (ii) capitalized research and development; (iii) purchased software; (iv) internally developed software; (v) trademarks; (vi) other identifiable intangible assets; and (vi) goodwill. Report a single amount for each of items (e) through (i).

(a) Gross Investment;

(b) Accumulated depreciation;

(c) Accumulated amortization;

(d) Net Investment;

(e) Accumulated deferred federal income taxes;

(f) Accumulated deferred state income taxes;

(g) Customer prepayments or deposits;

(h) Cash Working Capital (see d.(1) and (2) below); and

(i) Net Capital Stock.

(2) *Capital Expenses and Related Tax Information:* Report the annual amount or a percentage for each Year of the Reporting Period for each of the items specified below. Report amounts for items (a) and (b) separately for each of the following types of assets: (i) Tangible assets; (ii) capitalized research and development; (iii) purchased software; (iv) internally developed software; (v) trademarks; (vi) other identifiable intangible assets; and (vii) goodwill. Report a single amount for each of items (c) through (p).

(a) Depreciation;

(b) Amortization;

(c) Weighted Average Cost of Capital (see c.(1) and (2) below);

(d) Return;

(e) Interest other than interest paid on customer prepayments or deposits;

(f) Interest paid on customer prepayments or deposits;

(g) Other income tax-related adjustments;

(h) Federal taxable income;

(i) Federal income tax rate;

(j) Federal income tax gross-up factor;

(k) Federal income tax;

(l) Federal income tax not deductible for state income tax purposes;

(m) State taxable income;

(n) State income tax rate;

(o) State income tax gross-up factor; and

(p) State income tax.

(3) *Operating Expenses:* Report the annual amount for each Year of the Reporting Period for each of the items specified below. Exclude any charges for asset impairment loss.

(a) Maintenance, repair, and engineering of site plant, equipment, and facilities;

(b) Origination, switching, and transporting of Interstate, International and Intrastate Communication and termination of Interstate and Intrastate Communication;

(c) Termination of International Communication;

(d) Field service;

(e) Network operations;

(f) Call center;

(g) Data center;

(h) Security Services relating to the Company's ICS-Related Operations, non-ICS Operations, or both;

(i) Billing, collection, client management, and customer care;

(j) Sales and marketing;

(k) General and administrative;

(l) Other overhead;

(m) Taxes other than income taxes;

(n) Transactions related to mergers and acquisitions; and

(o) Bad debt.

c. Weighted Average Cost of Capital

(1) Elect, by checking the appropriate box on the Excel template, whether to use the default Weighted Average Cost of Capital of 9.75% (which is the Commission's currently authorized rate of return for incumbent local exchange carriers regulated on a rate-of-return basis) for each Year of the Reporting Period or an alternative Weighted Average Cost of Capital reflecting the Company's own and a demonstrably comparable-group of firms' financial data and economic circumstances, use of widely accepted methods to estimate current debt and equity costs and capital structure, and the collective risks of providing ICS, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service.

(2) If you elect to use an alternative Weighted Average Cost of Capital greater than 9.75%, report on the Excel template the components of the Company's current Weighted Average Cost of Capital and the Weighted Average Cost of Capital itself, as specified below. Use this singular estimate of the Company's current Weighted Average Cost of Capital to calculate Return for each Year of the Reporting Period. In the Word template, fully document by submitting data, formulas, cost of equity analyses using, for example, the Discounted Cash Flow Model or Capital Asset Pricing Model, calculations, and worksheets, explain, and justify the development of each claimed component. Failure to fully document, explain, and justify each claimed component may result in the application of the default Weighted Average Cost of Capital of 9.75%.

(a) Cost of debt;

(b) Cost of preferred stock;

(c) Cost of equity;

(d) Total debt outstanding in dollars and as a percent of total capital outstanding (the sum of debt, preferred stock, and equity outstanding);

(e) Total preferred stock outstanding and as a percent of total capital outstanding;

(f) Total equity outstanding and as a percent of total capital outstanding; and

(g) Weighted Average Cost of Capital.

d. Cash Working Capital

(1) Elect, by checking the appropriate box on the Excel template, whether to include an allowance for Cash Working Capital in the Company's Net Capital Stock.

(2) If you elect to include an allowance for Cash Working Capital in the Company's Net Capital Stock, report the allowance claimed for each Year of the Reporting Period on the Excel template separately for: (a) Inmate Calling Services; (b) Automated Payment Service; (c) Live Agent Service; and (d) Paper Bill/Statement Service. Submit a lead-lag study or the equivalent that estimates the average number of days between the payment of expenses and the receipt of revenues and average daily cash expenses as support for each claimed allowance. Fully document, explain, and justify each claimed allowance in the Word template.

e. Annual Total Expenses

(1) Report Company-wide Annual Total Expenses separately for: (a) Inmate Calling Services; (b) Automated Payment Service; (c) Live Agent Service; and (d) Paper Bill/Statement Service. Exclude reported interest expense other than interest paid on customer prepayments or deposits from Annual Total Expenses. The allowance for interest expense other than interest paid on customer prepayments or deposits is included in the Return component of the Annual Total Expenses calculation. Include reported interest paid on customer prepayments or deposits in Annual Total Expenses. Exclude expense reported for termination of International Communication from Annual Total Expenses.

f. Optional Allocations and Adjustments

(1) In the Word template, state whether the Company elects to further separate its investments, expenses, Net Capital Stock, and Annual Total Expenses between interstate/international and intrastate Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service to reflect any measurable differences between the cost incurred to provide interstate/international and intrastate services. If you elect to separate the Company's investments, expenses, Net Capital Stock, and Annual Total Expenses between interstate/international and intrastate Inmate Calling Services, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service, you must: (a) Fully document, explain, and justify this separation in the Word template; and (b) submit additional Excel spreadsheets, similar in design and level of data disaggregation to those in the Excel template, showing in detail each aspect of the Company's separations processes. These showings in the Word template and Excel spreadsheets must fully document and justify each aspect of the processes by which the separated interstate/international Inmate Calling Services investment and expenses are further assigned, attributed, or allocated to or among each of the Company's Facilities, and how the Net Capital Stock and Annual Total Expenses for each of these Facilities are developed. Electing this cost allocation option does not relieve the Company of its obligation to report its unseparated investments, expenses, Net Capital Stock, and Annual Total Expenses in the Excel template and in accordance with the instructions for reporting unseparated data.

(2) In the Word template, state whether the Company elects to further adjust its investments, expenses, Net Capital Stock, and Annual Total Expenses developed in accordance with the instructions set out in this document, for any other reason. If you elect to make such an adjustment, you must: (a) Fully document, explain, and justify it in the Word template; and (b) submit additional Excel spreadsheets, similar in design and level of data disaggregation to those in the Excel template, showing in detail each aspect of the Company's adjustments, including all changes to the Company's data, cost allocation procedures, and results. If the Company also elects to further separate its investments, expenses, Net Capital Stock, and Annual Total Expenses as specified in Part IV.C.2.f.(1), above, you also must separately justify and document the impact of any further adjustments in response to this Inquiry upon your

results under Part IV.C.2.f.(1). Electing this additional adjustment option does not relieve the Company of its obligation to report its unseparated and unadjusted investments, expenses, Net Capital Stock, and Annual Total Expenses on the Excel template and in accordance with the instructions for reporting unseparated and unadjusted data.

3. Other Company-Wide Information

This subsection directs you to report Company-wide data on Site Commissions, Security Services, Ancillary Services, and Affiliate Transactions. It also provides instructions on reporting data and other information where a Provider subcontracts with another entity for the provision of ICS.

a. Site Commissions

(1) *Total Site Commissions:* Enter the total amount of all Site Commissions paid by the Company during each Year of the Reporting Period, without regard to whether the Site Commission was Legally Mandated, Contractually Prescribed, Fixed, Variable, Monetary, or In-Kind.

(a) Enter the percentage of the total Site Commissions paid by the Company during each Year of the Reporting Period that were attributable to the Company's ICS-Related Operations.

(2) *Total Legally Mandated Site Commissions:* Enter the total amount of Legally Mandated Site Commissions paid by the Company during each Year of the Reporting Period.

(a) *Total Monetary Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site, Monetary Commissions paid by the Company.

(i) *Total Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions paid by the Company that were both Monetary Site Commissions and Fixed Site Commissions.

(aa) *Total Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions that not only were Monetary Site Commissions and Fixed Site Commissions but also were paid by the Company at the signing of a contract for ICS or during the first year of a contract for ICS.

(ii) *Total Variable Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions paid by the Company that were both Monetary Site Commissions and Variable Site Commissions.

(b) *Total In-Kind Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site Commissions paid by the Company that were also In-Kind Site Commissions.

(i) In the Word template, describe these in-kind payments in detail. Specifically describe each Security Service that you classify as an In-Kind Site Commission payment. Also specifically describe any other payment, gift, exchange of services or goods, fee, technology allowance, or product that you classify as an In-Kind Site Commission payment.

(ii) *Total Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions paid by the Company that were both In-Kind Site Commissions and Fixed Site Commissions.

(aa) *Total Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions that not only were In-Kind Site Commissions and Fixed Site Commissions but also were paid by the Company at the signing of a contract for ICS or during the first year of a contract for ICS.

(iii) *Total Variable Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions paid by the Company that were both In-Kind Site Commissions and Variable Site Commissions.

(3) *Total Contractually Prescribed Site Commissions:* Enter the total amount of Contractually Prescribed Site Commissions paid by the Company during each Year of the Reporting Period.

(a) *Total Monetary Site Commissions:* For each Year of the Reporting Period, enter the total amount of Contractually Prescribed Site Commissions paid by the Company that were also Monetary Site Commissions.

(i) *Total Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed Site Commissions paid by the Company that were both Monetary Site Commissions and Fixed Site Commissions.

(aa) *Total Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed Site Commissions that not only were Monetary Site Commissions and Fixed Site Commissions but also were paid by the Company at the signing of a contract for ICS or during the first year of a contract for ICS.

(ii) *Total Variable Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed Site Commissions paid by the Company that were both Monetary Site Commissions and Variable Site Commissions.

(b) *Total In-Kind Site Commissions:* For each Year of the Reporting Period, enter the total amount of Contractually Prescribed Site Commissions that paid by the Company that were also In-Kind Site Commissions.

(i) In the Word template, describe these in-kind payments in detail. Specifically describe each Security Service that you classify as an In-Kind Site Commission payment. Also specifically describe any other payment, gift, exchange of services or goods, fee, technology allowance, or product that you classify as an In-Kind Site Commission payment.

(ii) *Total Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed Site Commissions paid by the Company that were both In-Kind Site Commissions and Fixed Site Commissions.

(aa) *Total Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed that not only were In-Kind Site Commissions and Fixed Site Commissions but also were paid by the Company at the signing of a contract for ICS or during the first year of a contract for ICS.

(iii) *Total Variable Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed Site Commissions paid by the Company that were both In-Kind Site Commissions and Variable Site Commissions.

(4) *Site Commissions Allocation Methodology:* In the Word template, fully describe, document, explain, and justify the allocation methodology you use to allocate Site Commission payments between ICS and non-ICS operations in situations where you made Site Commission payments for both ICS and non-ICS Operations.

b. Security Services Not Classified as Site Commissions

Reporting in response to the following questions (1) through (3) must be exclusive of the data reported in connection with Site Commissions to prevent double-counting.

(1) On the Excel template, report the total dollar amount of costs the Company incurred to provide the following categories of services for each Year of the Reporting Period.

(a) Law enforcement support services.

(i) In the Word template, identify by name and describe each service you

classify as a law enforcement support service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(b) Call security services.

(i) In the Word template, identify by name and describe each service you classify as a call security service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(c) Call recording services.

(i) In the Word template, identify by name and describe each service you classify as a call recording service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(d) Call monitoring services.

(i) In the Word template, identify by name and describe each service you classify as a call monitoring service, including a description of the specific tasks and functions covered by this service whether you routinely offer this service in connection with ICS.

(e) Voice biometrics services.

(i) In the Word template, identify by name and describe each service you classify as a voice biometric service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(f) Other services.

(i) In the Word template, identify by name and describe each Security Service you provide that is not classified under one of the foregoing subcategories, including a description of the specific tasks and functions covered by each service and whether you routinely offer each service in connection with ICS.

(2) In the Word template, specifically describe each Security Service provided by you that you do not classify as a Site Commission and is *not offered in connection* with ICS.

(3) In the Word template, specifically describe any other payment, gift, exchange of goods or services, fee, technology allowance, or product provided for security purposes that you do not classify as a Site Commission payment.

c. Ancillary Services

This subsection directs you to provide certain Company-level information on your Ancillary Services expenses and revenues, and Revenue-Sharing Agreements in connection with your Ancillary Services. First, this subsection directs you to report expenses you incurred in providing Ancillary Services and includes inquiries requiring you to report subsets of those expenses and/or provide narratives in the Word template. Second, this subsection directs you to report revenues earned from providing Ancillary Services and similarly includes questions requiring you to report subsets of those revenues and/or provide narrative responses. Third, this subsection directs you to identify and provide information regarding Revenue-Sharing Agreements relating to your Ancillary Services in the Word template.

(1) *Ancillary Services:* Enter ''Yes'' if you charged Customers Automated Payment Service Fees, Live Agent Service Fees, Paper Bill/Statement Service Fees, Fees for Single-Call and Related Services, Third-Party Financial Transaction Services Fees during the Reporting Period. Otherwise, enter ''No.''

(a) In the next cell, enter ''Yes'' if you charged Customers more than one Permissible Ancillary Service Charge fee in connection with the same interstate, international, or mixed-jurisdictional transaction during the Reporting Period.

(i) If you answered ''Yes,'' describe in detail the circumstances relating to those charges in the Word template. Your description shall include, in addition to all other relevant information, a list of the specific transactions for which you charged multiple fees, the fee charged in each transaction, the functions that were covered by each fee, and the total amounts that Customers paid for each fee.

(2) *Ancillary Services Expenses:* Enter your Annual Total Expenses in providing Automated Payment Service, Paper Bill/Statement Service, and Live Agent Service for each Year of the Reporting Period.

(a) *Automated Payment Services:* Enter the Annual Total Expenses incurred in providing Automated Payment Service for each Year of the Reporting Period.

(i) In the next cell, identify each Affiliate, if any, that the Company used in providing its Automated Payment Service.

(ii) In the next cell, enter ''Yes'' if the Company used a Third Party in providing its Automated Payment Service. Otherwise Enter ''No.''

(aa) If you entered ''Yes,'' identify each such Third Party in the next cell.

(bb) Enter the amount the Company paid to each listed Third Party for providing Automated Payment Service for each Year of the Reporting Period.

(iii) In the Word template, describe payment card processing services offered in connection with your Automated Payment Service for each Year of the Reporting Period. Identify whether the payment card processing was performed by the Company, an Affiliate, or a Third Party. If provided by an Affiliate or Third Party, identify the Affiliate or Third Party.

(b) *Live Agent Services:* Enter the Annual Total Expenses applicable to your Live Agent Service for each Year of the Reporting Period.

(i) In the next cell, identify each Affiliate, if any, that the Company used in providing its Live Agent Service.

(ii) In the next cell, enter ''Yes'' if the Company used a Third Party in providing its Live Agent Service. Otherwise enter ''No.''

(aa) If you entered ''Yes,'' identify each such Third Party in the next cell.

(bb) In the next cell, enter the amount the Company paid each listed Third Party for each Year of the Reporting Period to provide Live Agent Service.

(c) *Paper Bill/Statement Services:* Enter the Annual Total Expenses applicable to your Paper Bill/Statement Service for each Year of the Reporting Period.

(i) In the next cell, identify each Affiliate that the Company used in providing its Paper Bill/Statement Service.

(ii) In the next cell, enter ''Yes'' if the Company used a Third Party in providing its Paper Bill/Statement Service. Otherwise, enter ''No.''

(aa) If you entered ''Yes,'' identify each such Third Party in the next cell.

(bb) In the next cell, enter the amount the Company paid each listed Third Party for each Year of the Reporting Period to provide.

(d) *Single-Call and Related Services:*

(i) List each entity that charged the Company for billing services for Single-Call and Related Services during each Year of the Reporting Period. Indicate whether each listed entity is a Third Party.

(ii) Enter the amount the Company paid each Third Party for billing services in connection with Single-Call and Related Services for each Year of the Reporting Period.

(iii) Enter the amount the Company paid a Third Party for billing services in connection with Single-Call and Related Services that the Company passed through to Customers for each Year of the Reporting Period.

(iv) Enter the amount the Company paid to an entity other than a Third Party for billing services in connection with Single-Call and Related Services for each Year of the Reporting Period.

(v) Enter the amount the Company paid to an entity other than a Third

Party for billing services in connection with Single-Call and Related Services for each Year of the Reporting Period that the Company passed through to Customers.

(vi) In the Word template, state whether any entity other than the Company charged Customers Single-Call and Related Services Fees in connection with the Company's ICS-Related Operations during each Year of the Reporting Period. If so, list each such entity, indicate whether each listed entity is a Third Party, and provide the amount of such fees each listed entity charged Customers during each Year of the Reporting Period.

(e) *Third-Party Financial Transaction Services:*

(i) *Payment Card Processing for Third-Party Financial Transaction Services:* In the Word template, describe payment card processing services performed in connection with Third-Party Financial Transaction Services during each Year of the Reporting Period. Identify whether the payment card processing was performed by the Company, an Affiliate, or a Third Party. If provided by an Affiliate or Third Party, identify the Affiliate or Third Party.

(ii) List each entity that charged the Company for providing Third-Party Financial Transaction Services during the Reporting Period in connection with the Company's ICS-Related Operations. Indicate whether each listed entity is a Third Party.

(iii) Enter the amount the Company paid to a Third Party for Third-Party Financial Transaction Services during each Year of the Reporting Period.

(iv) Enter the amount the Company paid to a Third Party for Third-Party Financial Transaction Services that the Company passed through to Customers during each Year of the Reporting Period.

(v) Enter the amount the Company paid to an entity other than a Third Party for Third-Party Financial Transaction Services during each Year of the Reporting Period.

(vi) Enter the amount the Company paid to an entity other than a Third Party for Third-Party Financial Transaction Services that the Company passed through to Customers during each Year of the Reporting Period.

(vii) In the Word template, state whether any entity other than the Company charged Customers for Third-Party Financial Transaction Services in connection with the Company's ICS-Related Operations during each Year of the Reporting Period. If so, list each such entity and provide the amount of such fees each listed entity charged Customers during each Year of the Reporting Period.

(3) *Ancillary Services Revenues:* Enter the total revenues you received from Customers for providing Permissible Ancillary Services during each Year of the Reporting Period. This total shall include fees Customers paid the Company for Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, Third-Party Financial Transaction Services, and Other Ancillary Services.

(a) *Automated Payment Service Revenues:* Enter the total amount of revenues the Company received from charging Automated Payment Fees during each Year of the Reporting Period.

(i) *Payment Card Processing Revenues for Automated Payment Service:* Of the amount reported for Total Automated Payment Fee Revenues above, enter the amount of those revenues applicable to payment card processing for each Year of the Reporting Period.

(aa) In the Word template, describe the payment card processing services in connection with Automated Payment Service revenue. Identify whether the payment card processing was performed by the Company, an Affiliate, or a Third Party. If payment card processing was performed by an Affiliate or Third Party, identify the Affiliate or Third Party.

(ii) *Automated Payment Service Revenue-Sharing Agreements:* If the Provider has a Revenue-Sharing Agreement with an Affiliate or Third Party in connection with Automated Payment Service, including for any payment card processing functions enter ''Yes.'' Otherwise, enter ''No.''

(aa) If you answered ''Yes,'' you must provide the information requested below under the ''Ancillary Services Revenue-Sharing Agreements'' heading in the Word template.

(b) *Live Agent Fee Revenues:* Enter the total revenues the Company received from charging the Live Agent Fee for each Year during the Reporting Period.

(i) In the next cell, enter ''Yes'' if an Affiliate or Third Party charged the Live Agent Fee for each Year during the Reporting Period. Otherwise, enter ''No.'' If you entered ''Yes,'' identify each such Affiliate or Third Party in the next cell and provide the amount charged by the Affiliate or Third Party next to the name.

(c) *Paper Bill/Statement Fee Revenues:* Enter the total revenues the Company received from charging the Paper Bill/Statement Fee for each Year during the Reporting Period.

(d) *Single-Call and Related Services Revenues:* Enter the total amount of revenues the Company received from charging Fees for Single-Call and Related Services for each Year during the Reporting Period.

(i) *Single-Call and Related Services:* Of the amount reported for Total Single-Call and Related Services Revenues above, enter the amount of those revenues the Company received from charging the adopted, per-minute rate in connection with Single-Call and Related Services. This amount should exclude any Third-Party charges passed through to Customers as part of providing Single-Call and Related Services.

(ii) *Single-Call and Related Services Revenue-Sharing Agreements:* If the Provider has a Revenue-Sharing Agreement with an Affiliate or a Third Party in connection with Single-Call and Related Services enter ''Yes.'' Otherwise, enter ''No.''

(aa) If you answered ''Yes,'' you must provide the information requested below under the ''Ancillary Services Revenue-Sharing Agreements'' heading in the Word template.

(e) *Third-Party Financial Transaction Fee Revenue:* Enter the total revenues the Company received from charging Third-Party Financial Transaction Fees for each Year during the Reporting Period.

(i) *Payment Card Processing Revenues from Third-Party Financial Transaction Services:* Of the amount reported for Total Third-Party Financial Transaction Fee Revenue, enter the amount of that revenue applicable to payment card processing for each Year during the Reporting Period.

(ab) In the Word template, describe these payment card processing services, including whether they were performed by the Provider, an Affiliate, or a Third Party. If provided by an Affiliate or a Third Party, identify each Affiliate or Third Party. State whether the Company charged Customers payment card processing fees for each Year during the Reporting Period. If so, enter the amount of such fees charged to Customers for each Year during the Reporting Period.

(ii) *Third-Party Financial Transaction Fee Revenue-Sharing Agreements:* If the Provider has a Revenue-Sharing Agreement with an Affiliate or a Third Party in connection with Third-Party Financial Transaction Fees, enter ''Yes.'' Otherwise, enter ''No.''

(aa) If you answered ''Yes,'' you must provide the information requested below under the ''Ancillary Services Revenue-Sharing Agreements'' heading in the Word template.

(4) *Ancillary Services Revenue-Sharing Agreements:* In the Word template, identify any Revenue-Sharing Agreements between the Provider and

any Affiliate and/or Third Party in connection with any Ancillary Service.

(a) For each Revenue-Sharing Agreement identified, provide, at a minimum, the following information:

(i) The parties to the agreement;

(ii) Identify each payor and each payee under the agreement;

(iii) Whether any party to the agreement is an Affiliate or Third Party;

(iv) The Ancillary Service for which revenue is required to be shared under the agreement;

(v) The amount of revenue to be shared under the terms of the agreement;

(vi) The total amount of revenue shared for each Year during the Reporting Period;

(vii) The total amount of revenue shared for each Ancillary Service; and

(viii) The effective and termination dates of the agreement.

d. Affiliate Transactions

(1) In the Word template, describe in detail all types of transactions between the Accounting Entity and its non-Accounting Entity Affiliates.

(2) *Provider's Payments to Non-Accounting Entity Affiliates:*

(a) *Total ICS Revenue Paid to Non-Accounting Entity Affiliates:* Enter the amount of ICS revenue the Provider paid to any non-Accounting Entity Affiliate during each Year of the Reporting Period.

(b) *Total Automated Payment Fee Revenue Paid to Non-Accounting Entity Affiliates:* Enter the amount of Automated Payment Fee revenue the Provider paid to any non-Accounting Entity Affiliate during each Year of the Reporting Period.

(c) *Total Single-Call and Related Services Revenue Paid to Non-Accounting Entity Affiliates:* Enter the amount of revenue from charging Fees for Single-Call and Related Services the Provider paid to any non-Accounting Entity Affiliate during each Year of the Reporting Period.

(d) *Total Live Agent Fee Revenue Paid to Non-Accounting Entity Affiliates:* Enter the amount of Live Agent Fee revenue the Provider paid to any non-Accounting Entity Affiliate during each Year of the Reporting Period.

(e) *Total Paper Bill/Statement Fee Revenue Paid to Non-Accounting Entity Affiliates:* Enter the amount of Paper Bill/Statement Fee revenue the Provider paid to any Affiliate during each Year of the Reporting Period.

(f) *Total Third-Party Financial Transaction Fee Revenue Paid to Non-Accounting Entity Affiliates:* Enter the amount of Third-Party Financial Transaction Fee Revenue the Provider paid to any non-Accounting Entity Affiliate during each Year of the Reporting Period.

(g) *International Termination Payments to Affiliates:* Enter the total amounts paid by the Company to an affiliated international service provider during each Year of the Reporting Period to terminate International ICS Calls originating from the Facility.

e. Instructions Relating to Subcontracts To Provide Inmate Calling Services

This subsection provides instructions on reporting data and other information where a Provider subcontracts with another entity for the provision of ICS. The primary goal in requiring the submission of these data is to prevent double counting of costs and/or revenues between a Company and other entities when they have a contractual or other arrangement to provide ICS to the same Facility. Further, we also seek to understand the nature of any such arrangements.

Subcontractor Reporting of Cost and Revenue Data: In reporting cost and revenue data, Subcontractors shall not treat any Billed Revenue passed on to a Provider as an expense and shall otherwise report investments, expenses, and revenues in accordance with the instructions set forth in this document.

(1) *Provider Reporting of Cost Data:* Where a Provider has a Subcontractor:

(a) The Provider shall directly assign, attribute, or allocate its investments and expenses based on the cost allocation hierarchies set forth in these instructions to or among:

(i) Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services;

(ii) Further directly assign, attribute, or allocate the Provider's Inmate Calling Services investments and expenses to or among (i) Provider-supplied facilities; and (ii) Subcontractor-supplied facilities.

(2) *Narrative Description of a Subcontract to Provide ICS:* If a Provider contracts with a Subcontractor to provide any aspect of ICS, the Provider and the Subcontractor shall explain each such arrangement in the Word templates of their respective responses. At a minimum, each such explanation shall include:

(a) The name of the Provider with the contractual or other agreement with a Facility or contracting authority for the provision of ICS;

(b) The name of the Subcontractor;

(c) The services provided by the Subcontractor under the agreement;

(d) The unique identifier and address for the Facilities at which the Subcontractor provides services under the agreement;

(e) A description of the ICS-Related Operations provided by the Provider and the Subcontractor;

(f) The types of ICS calls billed by the Provider and the Subcontractor; and

(g) A description of any Revenue-Sharing Agreement between the Provider and the Subcontractor.

D. Facility-Specific Information

The previous section directs you to provide general financial data and other information at the Company level. In this section, we direct you to provide financial data and other information at the Facility level. You must submit individual data for each Facility even if that Facility is covered by the same contract as other Facilities. Those data must be specific to the Facility in question and not simply a repeat of data reported for other Facilities covered by the same contract.

1. Facility-Specific Financial Information

Part IV.C.2, above, directs you to provide Company-wide financial information. We now direct you to provide financial information at the Facility level. We begin by providing cost allocation instructions. We then direct you to provide the results of the cost allocation process. We also direct you to provide Annual Total Expenses for ICS at each Facility as well as Facility-specific demand and revenue data. In particular, this subsection seeks Inmate Calling Service demand, revenue, and expense information allocated by Facility in accordance with the cost allocation instructions set forth below.

a. Cost Allocation Instructions

In Part IV.C.2, above, we direct you to allocate your Company-wide investments and expenses to Inmate Calling Services, among other services, in accordance with certain instructions. We now provide instructions on how you are to allocate the Company-wide investments and expenses allocated to Inmate Calling Services among the Facilities at which the Company provides Calling Services to incarcerated people.

To the extent possible, you must assign or allocate Company-wide investments and expenses for Inmate Calling Services among Facilities using the hierarchy of methods specified below.

(1) First, to the extent possible, directly assign investments used

exclusively to provide Inmate Calling Services at or for a particular Facility to that Facility; likewise, to the extent possible, directly assign expenses incurred exclusively to provide Inmate Calling Services at or for a particular Facility to that Facility. Calculate federal and state income taxes relative to Inmate Calling Services for a particular Facility as specified in 6 and 7 below.

(2) Second, group shared investments and expenses into shared investment and expense categories based on business function, activity, or task. Group common investments and expenses into common investment and expense categories based on business function, activity, or task.

(a) Any investments and expenses that are not directly assignable to a specific Facility are shared or common investments and expenses.

(b) Shared investments are for assets used exclusively to provide Inmate Calling Services at or for a specific subset of Facilities that are not assignable or attributable to a particular Facility. Shared expenses are expenses incurred solely to provide Inmate Calling Services at or for a specific subset of Facilities that are not assignable or attributable to a specific Facility.

(c) Common investments are for assets not assignable or attributable to a specific Facility or subset of facilities. Common expenses are expenses that are not assignable or attributable to a specific Facility or subset of Facilities.

(3) Third, to the extent possible, directly attribute categories of shared investments and expenses, and categories of common investments and expenses, to particular Facilities based on direct analysis of factors that cause a particular business function, activity, or task—and thus investments or expenses—to increase or decrease.

(4) Fourth, where neither direct assignment nor direct attribution is possible, allocate categories of shared investments and expenses, and categories of common investments and expenses, to particular Facilities based on an indirect, cost-causative link to another investment and expense or another investment or expense category (or group of categories) for which direct assignment or attribution is possible.

(5) Fifth, where none of the methods described above is possible, allocate categories of shared investments and expenses to the particular Facilities that share the investments and expenses in proportion to each Facility's share of the total of all investments or expenses already directly assigned or attributed to these particular Facilities. Allocate categories of common investments and expenses to particular Facilities in proportion to each Facility's share of the total of all investments or expenses already directly assigned or attributed to all Facilities.

(6) *Federal income taxes:* First, subtract reported interest expense other than interest paid on customer prepayments or deposits (and any amount reported for other income tax-related adjustments) from Return to determine federal taxable income. Second, divide the federal income tax rate by 1 minus the federal income tax rate to determine a federal income tax gross-up factor. Third, multiply the federal income tax gross-up factor by federal taxable income to determine the amount of federal income tax to report.

(7) *State income taxes:* First, add the portion of federal income tax that is not deductible for state income tax purposes to federal taxable income to determine state taxable income. Second, divide the individual state income tax rate applicable to a particular Facility by 1 minus the individual state income tax rate applicable to that Facility to determine a state income tax gross-up factor. Third, multiply the state income tax gross-up factor by state taxable income to determine the amount of state income tax to report.

The sums of the investment and expense amounts assigned to, attributed to, or allocated among Facilities shall equal the total of the Company-wide investment and expense amounts reported for Inmate Calling Services. The sums of the federal and state income taxes calculated separately for each of the Facilities shall equal the Company-wide federal and state income tax amounts reported for Inmate Calling Services. Fully document, explain, and justify all cost assignments, attributions, and allocations in the Word template.

b. Cost Allocation Results

Report the results of your cost assignments, attributions, and allocations in the Excel template.

(1) *Capital Assets:* Report the year-end amount related to the provision of Inmate Calling Services at or for each Facility for each Year of the Reporting Period for each of the items specified below. For Cash Working Capital (item (h)), please report the average amount.

(a) Gross Investment;

(b) Accumulated depreciation;

(c) Accumulated amortization;

(d) Net Investment;

(e) Accumulated deferred federal income taxes;

(f) Accumulated deferred state income taxes;

(g) Customer prepayments or deposits;

(h) Cash Working Capital; and

(i) Net Capital Stock.

(2) *Capital Expenses and Related Tax Information:* Report the annual amount or percentages related to the provision of Inmate Calling Services at or for each Facility for each Year of the Reporting Period for each of the items specified below.

(a) Depreciation;

(b) Amortization;

(c) Weighted Average Cost of Capital;

(d) Return;

(e) Interest other than interest paid on customer prepayments or deposits;

(f) Interest paid on customer prepayments or deposits;

(g) Other income tax-related adjustments;

(h) Federal taxable income;

(i) Federal income tax rate;

(j) Federal income tax gross-up factor;

(k) Federal income tax;

(l) Federal income tax not deductible for state income tax purposes;

(m) State taxable income;

(n) State income tax rate;

(o) State income tax gross-up factor; and

(p) State income tax.

(3) *Operating Expenses:* Report the annual amount related to the provision of Inmate Calling Services at or for each Facility for each Year of the Reporting Period for each of the items specified below. Each expense must be reported for a particular category; for example, do not report expense incurred for termination of International Communication as an expense incurred for Interstate and Intrastate Communication. Exclude any charges for asset impairment loss.

(a) Maintenance, repair, and engineering of site plant, equipment, and facilities;

(b) Origination, switching, and transporting of Interstate, International and Intrastate Communication and termination of Interstate and Intrastate Communication;

(c) Termination of International Communication;

(d) Field service;

(e) Network operations;

(f) Call center;

(g) Data center;

(h) Security Services relating to the Company's ICS-Related Operations;

(i) Billing, collection, client management, and customer care;

(j) Sales and marketing;

(k) General and administrative;

(l) Other overhead;

(m) Taxes other than income taxes;

(n) Transactions related to mergers and acquisitions; and

(o) Bad debt.

c. Facility-Specific Annual Total Expenses

Report the separate Facility-specific Annual Total Expenses for Inmate Calling Services for each Facility at which you provided Calling Services to incarcerated people. Exclude reported interest expense other than interest paid on customer prepayments or deposits from Annual Total Expenses. The allowance for interest expense other than interest paid on customer prepayments or deposits is included in the Return component of the Annual Total Expenses calculation. Include reported interest paid on customer prepayments or deposits in Annual Total Expenses. Exclude expense reported for termination of International Communication from Annual Total Expenses.

d. Facility-Specific Demand and Revenue Data

(1) *Demand for Inmate Calling Services:* Report on the Excel template the annual demand for Inmate Calling Services for each Year of the Reporting Period. Provide separate data for each Facility at which you provided Calling Services to incarcerated people. Annual demand shall be expressed in the units and for the categories specified below. Billed and Unbilled Minutes and Calls reported for different categories shall sum to the relevant total reported for Billed and Unbilled Minutes and Calls. You must submit individual data for each Facility even if that Facility is covered by the same contract as other Facilities. Those data must be specific to the Facility in question and not simply a repeat of data reported for other Facilities covered by the same contract. If you repeat or merge data across multiple facilities covered by a single contract, explain in the Word template why you did so and how you reported the data.

(a) Total Billed Calls;

(b) Billed Calls separately for (i) Interstate Communication, (ii) International Communication, and (iii) Intrastate Communication;

(c) Total Unbilled Calls;

(d) Total Billed and Unbilled Calls;

(e) Total Billed Minutes;

(f) Billed Minutes separately for (i) Interstate Communication, (ii) International Communication, and (iii) Intrastate Communication;

(g) Total Unbilled Minutes;

(h) Total Billed and Unbilled Minutes;

(i) Average Daily Population;

(aa) If you do not know a Facility's Average Daily Population, so indicate and provide your best estimate of that Average Daily Population. Explain the basis for this estimate in the Word template.

(j) Total number of ICS accounts opened;

(k) Total number of ICS accounts closed;

(l) Total Admissions;

(m) Total Releases;

(n) Weekly Turnover Rate;

(o) Number of Incarcerated Person Telephones Installed; and

(p) Number of Incarcerated Person Kiosks Installed.

(2) *Demand for Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Service:* Report on the Excel template the annual demand for Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Service. Provide separate data for each Facility at which you provided Calling Services to incarcerated people. Express demand for Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service as the number of Billed Uses. Express demand for Single-Call and Related Services and Third-Party Financial Transaction Service as the number of Billed Transactions. Billed demand reported for each Facility shall sum to the relevant total for all Facilities.

(3) *Revenues from Inmate Calling Services:* Report on the Excel template the annual Billed Revenues from Inmate Calling Services for each Year of the Reporting Period. Provide separate data for each of the categories specified below for each Facility at which you provided Calling Services for incarcerated people. Billed Revenues reported for different categories shall sum to the relevant total reported for Billed Revenues.

(a) Total Billed Revenues;

(b) Billed Revenues separately for (i) Interstate Communication, (ii) International Communication, and (iii) Intrastate Communication;

(4) *Revenues from Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Service:* Report on the Excel template the annual Billed Revenues from Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Single-Call and Related Services, and Third-Party Financial Transaction Service. Provide separate data for each Facility at which you provided Calling Services for incarcerated people. Billed Revenues reported for each Facility shall sum to the relevant total for all Facilities.

2. Other Facility-Specific Information

The following information requires you to report various Facility-level data in the Excel template.

a. General Information

(1) *Unique Identifier for Contract:* Enter a unique identifier for each contract under which the Company provides Inmate Calling Services.

(2) *Counterparty to Contract:* For each contract identified above, list the name of the party or entity that entered into the contract with the Provider.

(3) *Unique Identifier for Facility:* Enter a unique identifier for each Facility at which the Company offers Inmate Calling Services.

(4) *Facility Address:* Enter the complete address (street address, city, state, and ZIP Code) of the physical location of each Facility.

(5) *Facility Geographical Coordinates:* Enter the geographical coordinates of each Facility.

(6) *Facility Type (Jail or Prison):* Indicate whether each Facility is a Prison (P) or a Jail (J).

(7) *Maximum Call Duration:* Enter in minutes the Maximum Call Duration for ICS calls originating from each Facility. If neither the Facility nor the Company imposes a limit on the length of ICS calls placed from the Facility, enter ''N/A.''

b. Site Commissions

This subsection directs you to report Facility-specific data on Site Commissions. You must fully allocate all reported Site Commissions during the Reporting Period among the Facilities associated with each Site Commission payment.

(1) *Site Commissions:* For each Year of the Reporting Period, enter the total amount of all Site Commissions paid by the Company that was related to the Facility, without regard to whether the Site Commission was Legally Mandated, Contractually Prescribed, Fixed, Variable, Monetary, or In-Kind.

(a) For each Year of the Reporting Period, enter the percentage of the total Site Commissions paid by the Company that was related to the Facility and that was attributable to the Company's ICS-Related Operations.

(b) List the non-ICS Products and Services that the Company provided at the Facility during each year of the Reporting Period.

(c) In the Word template, identify for each Year of the Reporting Period any Site Commissions paid by the Company that related to any Facility and that

included both a monetary payment and an in-kind payment. Provide the name of the Facility, the entity to which you paid the Site Commission, and the amount of the monetary payment, and describe in detail the in-kind payment, including any Security Service.

(d) In the Word template, list for each Year of the Reporting Period each entity to which you paid a Site Commission. Provide the name of the Facility for which that entity is responsible and the amount paid to that entity without regard to whether the Site Commission was Legally Mandated, Contractually Prescribed, Fixed, Variable, Monetary, or In-Kind.

(2) *Legally Mandated Site Commissions:* Enter the total amount of Legally Mandated Site Commissions paid in connection with ICS calls from the Facility during each Year of the Reporting Period.

(a) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Legally Mandated Site Commissions in connection with ICS calls from the Facility. If the Site Commissions were paid to more than one entity, allocate the payment between the relevant entities.

(b) *Legally Mandated Site Commission Authority:* For each year of the Reporting Period during which you paid Legally Mandated Site Commissions in connection with ICS calls from the Facility, provide a citation to the authority requiring the such payment.

(c) *Total Monetary Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site, Monetary Commissions paid in connection with ICS calls from the Facility.

(d) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Legally Mandated, Monetary Site Commissions in connection with ICS calls from the Facility. If the Site Commissions were paid to more than one entity, allocate the payment between the relevant entities.

(i) *Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site Commissions that were both Monetary Site Commissions and Fixed Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid the Legally Mandated, Fixed, Monetary Site Commissions in connection with ICS calls from the Facility. If these Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ab) If the Legally Mandated, Fixed, Monetary Site Commission was imposed at the contract level (*e.g.,* a minimum annual guarantee due annually under a contract covering multiple Facilities), allocate the Site Commission payments among all Facilities covered by the contract.

(ac) In the Word template, describe the methodology used to allocate the Legally Mandated, Fixed, Monetary Site Commission payments among Facilities covered by the contract.

(ad) *Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions that not only were Monetary Site Commissions and Fixed Site Commissions but also were paid, at the signing of a contract or during the first year of the contract, in connection with the provision of ICS at the Facility.

(aaa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you made these upfront payments. If those Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ii) *Variable Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site Commissions that were both Monetary Site Commissions and Variable Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Legally Mandated, Variable, Monetary Site Commissions. If these Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(e) *Total In-Kind Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site Commissions that were also In-Kind Site Commissions and that were paid in connection with ICS calls from the Facility.

(i) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Legally Mandated, In-Kind Site Commissions in connection with ICS calls from the Facility. If those Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ii) In the Word template, describe these in-kind payments in detail. Specifically describe each Security Service provided at the Facility that you classify as an In-Kind Site Commission payment. Also specifically describe any other payment, gift, exchange of services or goods, fee, technology allowance, or product provided the Facility that you classify as an In-Kind Site Commission payment.

(iii) *Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of Legally Mandated Site Commissions that were both In-Kind Site Commissions and Fixed Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Legally Mandated, Fixed, In-Kind Site Commissions in connection with ICS calls from the Facility. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ab) If the Legally Mandated, Fixed, In-Kind Site Commission was imposed at the contract level (*e.g.,* a minimum annual guarantee due annually under a contract covering multiple Facilities), allocate the Site Commission among all Facilities covered by the contract.

(ac) In the Word template, describe the methodology used to allocate the Legally Mandated, Fixed, In-Kind Site Commission payments among Facilities covered by the contract.

(ad) *Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Legally Mandated Site Commissions that not only were In-Kind Site Commissions and Fixed Site Commissions but also were paid, at the signing of a contract or during the first year of the contract, in connection with the provision of ICS at the Facility.

(aaa) *Recipient:* For each year of the Reporting Period, enter the name of the entity or entities to which you made these upfront payments. If those Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(iv) *Variable Site Commissions:* For each Year of the Reporting Period, enter the amount of Legally Mandated Site Commissions that were both In-Kind Site Commissions and Variable Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient*: For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Legally Mandated, Variable, In-Kind Site Commissions. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(3) *Contractually Prescribed Site Commissions:* Enter the total amount of

Contractually Prescribed Site Commissions paid in connection with ICS calls from the Facility during each Year of the Reporting Period.

(a) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed Site Commissions Site Commissions in connection with ICS calls from the Facility. If the Site Commissions were paid to more than one entity, allocate the payment among the relevant entities.

(b) *Total Monetary Site Commissions:* For each Year of the Reporting Period, enter the total amount of Contractually Prescribed, Monetary Site Commissions paid related to the Facility.

(i) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed, Monetary Site Commissions. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ii) *Fixed Site Commissions:* For each Year of the Reporting Period, enter the total amount of Contractually Prescribed Site Commissions that were both Monetary Site Commissions and Fixed Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed, Fixed, Monetary Site Commissions in connection with ICS calls from the Facility. If these Site Commissions were paid to more than one entity, allocate the payments among the relevant entities

(ab) If the Contractually Prescribed, Fixed, Monetary Site Commission was imposed at the contract level (*e.g.,* a minimum annual guarantee due annually under a contract covering multiple Facilities), allocate the Site Commission among all Facilities covered by the contract.

(ac) In the Word template, describe the methodology used to allocate the Contractually Prescribed, Fixed, Monetary Site Commission payments among Facilities covered by the contract.

(ad) *Upfront Payments:* For each Year of the Reporting Period, enter the total amount of all Contractually Prescribed Site Commissions that not only were Monetary Site Commissions and Fixed Site Commissions but also were paid, at the signing of a contract or during the first year of the contract, in connection with the provision of ICS at the Facility.

(aaa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which made these upfront payments. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(iii) *Variable Site Commissions:* For each Year of the Reporting Period, enter the total amount of Contractually Prescribed Site Commissions that were both Monetary Site Commissions and Variable Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient*: For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed, Variable, Monetary Site Commissions. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(c) *Total In-Kind Site Commissions:* For each Year of the Reporting Period, enter the total amount of Contractually Prescribed Site Commissions that were also In-Kind Site Commissions and that were paid related in connection with ICS calls from the Facility.

(i) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed, In-Kind Site Commissions. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ii) In the Word template, describe these in-kind payments in detail. Specifically describe each Security Service provided at the Facility that you classify as an In-Kind Site Commission payment. Also specifically describe any other payment, gift, exchange of services or goods, fee, technology allowance, or product provided the Facility that you classify as an In-Kind Site Commission payment.

(iii) *Fixed Site Commissions:* For each Year of the Reporting Period, enter the amount of Contractually Prescribed Site Commissions that were both In-Kind Site Commissions and Fixed Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed, Fixed, In-Kind Site Commissions in connection with ICS calls from the Facility. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(ab) If the Contractually Prescribed, Fixed, In-Kind Site Commission was imposed at the contract level (*e.g.,* a minimum annual guarantee due annually under a contract covering multiple Facilities), allocate the Site Commission among all Facilities covered by the contract.

(ac) In the Word template, describe the methodology used to allocate the Contractually Prescribed, Fixed, In-Kind Site Commission payments among Facilities.

(ad) *Upfront Payments:* For each Year of the Reporting Period, enter the amount of all Contractually Prescribed Site Commissions that not only were In-Kind Site Commissions and Fixed Site Commissions but also were paid, at the signing of a contract or during the first year of the contract, in connection with the provision of ICS at the Facility.

(aaa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you made these upfront payments. If those Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(iv) *Variable Site Commissions:* For each Year of the Reporting Period, enter the amount of Contractually Prescribed Site Commissions that were both In-Kind Site Commissions and Variable Site Commissions and that were paid in connection with ICS calls from the Facility.

(aa) *Recipient:* For each Year of the Reporting Period, enter the name of the entity or entities to which you paid Contractually Prescribed, Variable, In-Kind Site Commissions. If the Site Commissions were paid to more than one entity, allocate the payments among the relevant entities.

(4) *Site Commission Allocation Methodology:* In the Word template, fully describe, document, explain, and justify the allocation methodology you used to allocate Site Commission payments between your ICS and non-ICS operations at each Facility during each Year of the Reporting Period in situations where you made Site Commission payments for both ICS and non-ICS Operations.

c. Security Services Not Classified as Site Commissions

Reporting in response to the following questions (1) through (4) must be exclusive of the data reported in connection with Site Commissions to prevent double-counting.

(1) On the Excel template, fully allocate and report the total dollar amount of costs the Company incurred to provide the following categories of services at each Facility during each Year of the Reporting Period.

(a) Law enforcement support services

(i) In the Word template, for each Facility and for each Year of the Reporting Period, identify by name and describe each service you classify as a law enforcement support service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(b) Call security services

(i) In the Word template, for each Facility and for each Year of the Reporting Period, identify by name and describe each service you classify as a call security service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(c) Call recording services

(i) In the Word template, for each Facility and for each Year of the Reporting Period, identify by name and describe each service you classify as a call recording service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(d) Call monitoring services

(i) In the Word template, for each Facility and for each Year of the Reporting Period, identify by name and describe each service you classify as a call monitoring service, including a description of the specific tasks and functions covered by this service whether you routinely offer this service in connection with ICS.

(e) Voice biometrics services

(i) In the Word template, for each Facility and for each Year of the Reporting Period, identify by name and describe each service you classify as a voice biometric service, including a description of the specific tasks and functions covered by this service and whether you routinely offer this service in connection with ICS.

(f) Other Security Services

(i) In the Word template, for each Facility and for each Year of the Reporting Period, identify by name and describe each Security Service that is not included in one of the foregoing subcategories, including a description of the specific tasks and functions covered by each service and whether you routinely offer each service in connection with ICS.

(2) In the Word template, specifically describe each Security Service you provided at the Facility that you do not classify as a Site Commission and that is *not offered in connection* with ICS.

(3) In the Word template, specifically describe any other payment, gift, exchange of goods or services, fee, technology allowance, or product provided for security purposes at the Facility that you do not classify as a Site Commission payment.

(4) In the Word template, fully describe, document, explain, and justify the allocation methodology you use to allocate the costs of your Security Services between ICS and non-ICS operations at each Facility during each Year of the Reporting Period in situations where Security Services offered by you also shared elements or overlapped with your non-ICS operations at each Facility.

d. Ancillary Services Information

(1) *Automated Payment Fee Revenues:* Enter the amount of Automated Payment Fee Revenues the Accounting Entity received from Customers for ICS calls originating in the Facility during each Year of the Reporting Period.

(2) *Automated Payment Fees Paid to An Affiliate:* Enter the amount of Automated Payment Fee revenue the Accounting Entity paid to any non-ICS Affiliate for ICS calls originating in the Facility during each Year of the Reporting Period.

(3) *Affiliates Used in Providing Automated Payment Service:* List each Affiliate, if any, that the Accounting Entity used in providing its Automated Payment Service at each Facility for each Year of the Reporting Period.

(4) *Third Parties Used in Providing Automated Payment Service:* List each Third Party, if any, that the Accounting Entity used in providing its Automated Payment Service at each Facility for each Year of the Reporting Period and enter the amount of Automated Pay Service for which the Company was billed by each listed Third Party at each Facility for each Year of the Reporting Period.

(5) *Automated Payment Fees and Third-Party Transaction Fees Charged in the Same Transaction:* In the Word template and for each Facility for each Year of the Reporting Period, identify any transactions for which both Automated Payment Fees and Third-Party Transaction Fees were charged, describe the services provided for the transaction, and apportion the fees charged for the services provided for each.

(6) *Payment Card Processing Revenue for Automated Payment Fees:* Of the amount reported for Automated Payment Fee Revenue above, enter the amount of that revenue attributable to payment card processing fees charged in connection with calls at each Facility during each Year of the Reporting Period.

(a) In the Word template, describe these payment card processing functions performed at each Facility, including whether they were performed by the Provider, an Affiliate, or a Third Party. If such functions were performed by an Affiliate or Third Party, identify the Affiliate or Third Party.

(7) *Fees for Single-Call and Related Services:* Enter the amount of Fees for Single-Call and Related Services the Accounting Entity received from Customers in connection with its ICS-Related Operations at the Facility during each Year of the Reporting Period.

(8) *Single-Call and Related Services Revenues Paid to An Affiliate:* Enter the amount of revenues from Fees for Single-Call and Related Services Customers paid to any Affiliate for ICS calls originating in the Facility during each Year of the Reporting Period.

(9) *Entities Charging the Accounting Entity for Billing Services:* List each entity that charged the Accounting Entity for billing services for Single-Call and Related services at each Facility for each year during the Reporting Period. Indicate whether each listed entity is a Third Party.

(10) *Amounts Paid to Third Parties for Billing Services:* Enter the amount the Accounting Entity paid to a Third Party for billing services in connection with Single-Call and Related Services at each Facility during each Year of the Reporting Period.

(11) *Single-Call and Related Services Fees Passed through to Customers:* Enter the amount the Accounting Entity paid to Third Parties for billing services in connection with Single-Call and Related Services that the Company passed through to Customers at each Facility during each Year of the Reporting Period.

(12) *Amounts Paid to Other Entities for Billing Services:* Enter the amount the Accounting Entity paid to entities other than Third Parties for billing services in connection with Single-Call and Related Services at each Facility during each Year of the Reporting Period.

(13) *Amounts Paid to Other Entities for Billing Services Passed Through to Customers:* Enter the amount the Accounting Entity paid to entities other than Third Parties for billing services in connection with Single-Call and Related Services that the Company passed through to Customers at each Facility during each Year of the Reporting Period.

(14) *Other Entities that Charged Customers for Single-Call and Related Services:* In the Word template, state whether any entity other than the

Company charged Customers Single-Call and Related Services Fees in connection with the Company's ICS-Related Operations at each Facility for each Year during the Reporting Period. If so, list each such entity, indicate whether each listed entity is a Third Party, and provide the amount of such fees each listed entity charged Customers at each Facility during each Year of the Reporting Period.

(15) *Live Agent Fees:* Enter the amount of Live Agent Fee revenue the Accounting Entity received from Customers in connection with its ICS-Related Operations at the Facility during each Year of the Reporting Period.

(16) *Affiliates Used to Provide Live Agent Service:* List each Affiliate, if any, that the Accounting Entity used in providing its Live Agent Service at each Facility during each Year of the Reporting Period.

(17) *Third Parties Used to Provide Live Agent Service:* List each Third Party, if any, that the Accounting Entity used in providing its Live Agent Service at each Facility during each Year of the Reporting Period.

(18) *Amounts Paid to Third Parties for Live Agent Service:* Enter the amount the Accounting Entity paid to each listed Third Party for Live Agent Service at each Facility during each Year of the Reporting Period.

(19) *Live Agent Fee Revenue Paid to an Affiliate:* Enter the amount of Live Agent Fee revenues the Accounting Entity paid to any non-ICS Affiliate for ICS calls originating in the Facility during each Year of the Reporting Period.

(20) *Paper Bill/Statement Fee Revenue:* Enter the amount of Paper Bill/Statement Fee revenue generated by calls originating in the Facility during each Year of the Reporting Period.

(21) *Affiliates Used to Provide Paper Bill/Statement Service:* List each Affiliate, if any, that the Accounting Entity used in providing its Paper Bill/Statement Fee Service at each Facility during each Year of the Reporting Period.

(22) *Third Parties Used to Provide Paper Bill/Statement Service:* List each Third Party, if any, that the Accounting Entity used in providing its Paper Bill/Statement Service at each Facility during each Year of the Reporting Period.

(23) *Amounts Paid to Third Parties for Paper Bill/Statement Service:* Enter the amount the Accounting Entity paid to each listed Third Party for Paper Bill/Statement Service at each Facility during each Year of the Reporting Period.

(24) *Paper Bill/Statement Fee Revenue Paid to an Affiliate:* Enter the amount of Paper Bill/Statement Fee revenue paid by the Accounting Entity to any non-ICS Affiliate for ICS calls originating in the Facility during each Year of the Reporting Period.

(25) *Third-Party Financial Transaction Fees:* Enter the amount of revenue from Third-Party Financial Transaction Fees the Accounting Entity received from Customers in connection with its ICS-Related Operations at the Facility during each Year of the Reporting Period.

(26) *Per-Transaction Charges for Third-Party Transactions:* Enter the per-transaction fee(s) charged to an end user for transferring money or processing other financial transactions to facilitate an end user's ability to make account payments via a Third Party, including a Third Party that is an Affiliate of the Provider. For each fee, indicate whether the Third Party receiving the payment is an Affiliate or non-Affiliate.

(27) *Payment Card Processing Revenue from Third-Party Financial Transaction Fees:* Of the amount reported for Third-Party Financial Transaction Fees above, enter the amount of that revenue applicable to charging Customers for payment card processing for each Facility during each Year during the Reporting Period.

(a) In the Word template, describe the payment card processing services in connection with revenue reported for Third-Party Financial Transaction Fees, including whether they were performed by the Provider, an Affiliate, or a Third Party. If such services were provided by an Affiliate or a Third Party, identify the Affiliate or Third Party.

(28) *Entities Charging the Accounting Entity for Third-Party Financial Transaction Services:* List each entity that charged the Accounting Entity for providing Third-Party Financial Transaction Services at each Facility for each Year of the Reporting Period. Indicate whether each listed entity is a Third Party.

(29) *Amounts Paid to Third Parties for Third-Party Financial Transaction Services:* Enter the amount the Accounting Entity paid to Third Parties for Third-Party Financial Transaction Services at each Facility during each Year of the Reporting Period.

(30) *Amounts Paid to Third Parties for Third-Party Financial Transaction Services Passed Through to Customers:* Enter the amount the Accounting Entity paid to Third Parties for Third-Party Financial Transaction Services that the Company passed through to Customers at each Facility for each Year of the Reporting Period.

(31) *Amounts Paid to Other Entities for Third-Party Financial Transaction Services:* Enter the amount the Accounting Entity paid to entities other than Third Parties for Third-Party Financial Transaction Services at each Facility during each Year of the Reporting Period.

(32) *Amounts Paid to Other Entities for Third-Party Financial Transaction Services Passed Through to Customers:* Enter the amount the Accounting Entity paid to entities other than Third Parties for Third-Party Financial Transaction Services that the Company passed through to Customers at each Facility during each Year of the Reporting Period.

(33) *Other Entities that Charged Customers for Third-Party Financial Transaction Services:* In the Word template, state whether any entity other than the Company charged Customers for Third-Party Financial Transaction Services in connection with the Company's ICS-Related Operations at each Facility for each Year of the Reporting Period. If so, list each such entity and provide the amount of such fees each listed entity charged Customers at each Facility for each Year of the Reporting Period.

(34) *Third-Party Financial Transaction Fees Paid to an Affiliate:* Enter the amount of Third-Party Financial Transaction Fees paid by the Accounting Entity to any non-ICS Affiliate for ICS calls originating in the Facility during each Year of the Reporting Period.

V. Certification Form

Each Provider of Inmate Calling Services must submit a signed certification form as part of its Mandatory Data Collection response. The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of the Provider must complete the form and certify that, based the executive's own reasonable inquiry, that all statements and information contained in the Provider's Mandatory Data Collection response are true, accurate, and complete. The Certification Form is Appendix C to these instructions.

(1) *Name of Service Provider:* Provide the name under which the Provider offers ICS. If the Provider offers ICS under more than one name, provide all relevant names.

(2) *Reporting Years:* Provide the relevant time period for the information the certification covers.

(3) *Officer Name, Title:* Provide the name and title of the officer completing the certification form. The officer must be the Chief Executive Officer (CEO),

Chief Financial Officer (CFO), or other senior executive of the Provider who can attest to the truthfulness, accuracy, and completeness of the information provided.

(4) *Mailing Address of Officer:* Provide the business mailing address of the officer identified in item (3).

(5) *Telephone Number:* Provide the business telephone number, with area code, of the officer identified in item (3).

(6) *Email Address:* Provide the business email address of the officer identified in item (3).

(7) *Certification:* This section requires the person who signs the certification form on behalf of the Provider to declare, under penalty of perjury, that (1) the signatory is an officer of the above-named Provider and is authorized to submit the attached Mandatory Data Collection response on behalf of the Provider; (2) the signatory has examined the attached Mandatory Data Collection response and determined that all requested information has been provided; and (3) based on information known to the signatory, or provided to the signatory by employees responsible for the information being submitted, and on the signatory's own reasonable inquiry, all statements and information contained in the Provider's Mandatory Data Collection response are true, accurate, and complete.

(8) *Signature of Authorized Officer:* The signature of the officer identified in item (3) is required in this block.

(9) *Date:* The date the officer identified in item (3) signs the form is required in this block.

(10) *Printed Name of Authorized Officer:* The printed name of the officer identified in item (3) is required in this block.

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Part III

Securities and Exchange Commission

17 CFR Parts 229, 232, 239, et al.
Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 239, 240, and 249

[Release Nos. 33–11038; 34–94382; IC–34529; File No. S7–09–22]

RIN 3235–AM89

Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incident reporting by public companies that are subject to the reporting requirements of the Securities Exchange Act of 1934. Specifically, we are proposing amendments to require current reporting about material cybersecurity incidents. We are also proposing to require periodic disclosures about a registrant's policies and procedures to identify and manage cybersecurity risks, management's role in implementing cybersecurity policies and procedures, and the board of directors' cybersecurity expertise, if any, and its oversight of cybersecurity risk. Additionally, the proposed rules would require registrants to provide updates about previously reported cybersecurity incidents in their periodic reports. Further, the proposed rules would require the cybersecurity disclosures to be presented in Inline eXtensible Business Reporting Language (''Inline XBRL''). The proposed amendments are intended to better inform investors about a registrant's risk management, strategy, and governance and to provide timely notification of material cybersecurity incidents.

DATES: Comments should be received on or before May 9, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*).
- Send an email to *rule-comment@sec.gov.* Please include File Number S7–09–22 on the subject line; or

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–22. 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 of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments also are 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 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Ian Greber-Raines, Special Counsel, Office of Rulemaking, at (202) 551–3460, Division of Corporation Finance; and, with respect to the application of the proposal to business development companies, David Joire, Senior Special Counsel, at (202) 551–6825 or *IMOCC@sec.gov,* Chief Counsel's Office, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to amend or add the following rules and forms:

Commission reference		CFR citation (17 CFR)
Regulation S–K		17 CFR 229.10 through 229.1305.
	Items 106 and 407	§ 229.106 and § 229.407.
Regulation S–T		17 CFR 232.10 through 232.903.
	Rule 405	§ 232.405.
Securities Act of 1933 (''Securities Act'') [1]	Form S–3	§ 239.13.
	Form SF–3	§ 239.45.
Securities Exchange Act of 1934 (''Exchange Act'') [2]	Rule 13a–11	§ 240.13a–11.
	Rule 15d–11	§ 240.15d–11.
	Schedule 14A	§ 240.14a–101.
	Schedule 14C	§ 240.14c–101.
	Form 20–F	§ 249.220f.
	Form 6–K	§ 249.306.
	Form 8–K	§ 249.308.
	Form 10–Q	§ 249.308A.
	Form 10–K	§ 249.310.

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[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

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I. Background

Public company investors and other participants in the capital markets depend on companies' use of secure and reliable information systems to conduct their businesses. A significant and increasing amount of the world's economic activities occurs through digital technology and electronic communications.[3] In today's digitally connected world, cybersecurity threats and incidents pose an ongoing and escalating risk to public companies, investors, and market participants.[4] Cybersecurity risks have increased for a variety of reasons, including the digitalization of registrants' operations; [5] the prevalence of remote work, which has become even more widespread because of the COVID–19 pandemic; [6] the ability of cyber-criminals to monetize cybersecurity incidents, such as through ransomware, black markets for stolen data, and the use of crypto-assets for such transactions; [7] the growth of digital payments; [8] and increasing company reliance on third party service providers for information technology services, including cloud computing technology.[9] In particular, cybersecurity

[3] Bhaskar Chakravorti, Ajay Bhalla, & Ravi Shankar Chaturvedi, *Which Economies Showed the Most Digital Progress in 2020?,* Harv. Bus. Rev. (Dec. 18, 2020), *available at https://hbr.org/2020/12/which-economies-showed-the-most-digital-progress-in-2020. See Percentage of Business Conducted Online,* IBISWORLD, *https://www.ibisworld.com/us/bed/percentage-of-business-conducted-online/88090/* (last updated Jan. 13, 2022). *See also U.S. Department of Commerce, Bureau of Economic Analysis, Updated Digital Economy Estimates—June 2021, available at https://www.bea.gov/system/files/2021-06/DE%20June%202021%20update%20for%20web%20v3.pdf* (''The digital economy accounted for 9.6 percent ($2,051.6 billion) of current-dollar gross domestic product ($21,433.2 billion) in 2019, according to new estimates from BEA. When compared with traditional U.S. industries or sectors, the digital economy ranked just below the manufacturing sector[.]'').

[4] *See* Steve Morgan, *Cybercrime to Cost The World $10.5 Trillion Annually By 2025,* Cybercrime Magazine, (Nov. 13, 2020), *available at https://cybersecurityventures.com/cybercrime-damage-costs-10-trillion-by-2025/*; Matt Powell, *11 Eye Opening Cyber Security Statistics for 2019,* CPO Magazine (June 25, 2019) *available at https://www.cpomagazine.com/tech/11-eye-opening-cyber-security-statistics-for-2019/* (The largest cybersecurity incidents involving public companies took place in the last ten years.); *see* Michael Hill and Dan Swinhoe, cso, The 15 biggest data breaches of the 21st century, *available at https://www.csoonline.com/article/2130877/the-biggest-data-breaches-of-the-21st-century.html; see e.g.,* Commission Statement and Guidance on Public Company Cybersecurity Disclosures (''2018 Interpretive Release''), Release No. 33–10459 (Feb. 26, 2018) No. 33–10459 (Feb. 21, 2018) [83 FR 8166 Feb. 26, 2018], *available at https://www.sec.gov/rules/interp/2018/33-10459.pdf* (''Companies today rely on digital technology to conduct their business operations and engage with their customers, business partners, and other constituencies. In a digitally connected world, cybersecurity presents ongoing risks and threats to our capital markets and to companies operating in all industries, including public companies regulated by the Commission.'').

[5] *See The US Digital Trust Insights Snapshot,* PwC Research (June 2021), *available at https://www.pwc.com/us/en/services/consulting/cybersecurity-risk-regulatory/library/2021-digital-trust-insights/cyber-threat-landscape.html.*

[6] *See* Stephen Klemash and Jamie Smith, *What companies are disclosing about cybersecurity risk and oversight,* EY (Aug. 10, 2020), *available at https://www.ey.com/en_us/board-matters/what-companies-are-disclosing-about-cybersecurity-risk-and-oversight* (noting ''[w]ith the COVID–19-driven accelerated shift to digital business and massive, potentially permanent shifts to remote working, including virtual board and executive management meetings, cybersecurity risks are exponentially greater.''). *See Navigating Cyber 2021,* FS–ISAC, *available at https://www.fsisac.com/navigatingcyber2021-report. See also* Vikki Davis, *Combating the cybersecurity risks of working home,* Cyber Magazine (Dec. 2, 2021), *available at https://cybermagazine.com/cyber-security/combating-cybersecurity-risks-working-home. See also* Dave Burg, Mike Maddison, & Richard Watson, *Cybersecurity: How do you rise above the waves of a perfect storm?,* The EY Glob. Info. Sec. Survey (July 22, 2021), *available at https://www.ey.com/en_us/cybersecurity/cybersecurity-how-do-you-rise-above-the-waves-of-a-perfect-storm.* (in a survey of 1,000 senior cybersecurity leaders, the results indicated that 81% of those surveyed said that COVID–19 forced organizations to bypass cybersecurity processes.).

[7] *See Combating Ransomware: A Comprehensive Framework For Action: Key Recommendations from the Ransomware Task Force,* Inst. for Sec. & Tech. (Apr. 2021), *available at https://securityandtechnology.org/ransomwaretaskforce/report*; (''The explosion of ransomware as a lucrative criminal enterprise has been closely tied to the rise of Bitcoin and other cryptocurrencies, which use distributed ledgers, such as blockchain, to track transactions.''); *see* James Lewis, *Economic Impact of Cybercrime—No Slowing Down,* P. 4, CSIS (Feb. 2018) (''Monetization of stolen data, which has always been a problem for cybercriminals, seems to have become less difficult because of improvements in cybercrime black markets and the use of digital currencies.''). *But see* Avivah Litan, *Gartner Predicts Criminal Cryptocurrency Transactions Will Drop by 30% by 2024,* gartner (Jan. 14, 2022) *available at https://www.gartner.com/en/articles/gartner-predicts-criminal-cryptocurrency-transactions-will-drop-by-30-by-2024* (predicting that successful ransomware payments will drop in the near future because of a number of developments including the transparency behind the blockchain platforms that crypto tokens use). *See also* Jeff Benson, *Biden Administration Seeks to Expand Crypto Tracking to Fight Ransomware,* decrypt, *available at https://decrypt.co/72582/biden-administration-seeks-expand-crypto-tracking-fight-ransomware* (noting that law enforcement agencies are putting additional resources into crypto-asset tracking as ''the overwhelming majority of ransomware attackers demand Bitcoin.'').

[8] Sumathi Bala, *Rise in online payments spurs questions over cybersecurity and privacy,* CNBC (July 1, 2021), *available at https://www.cnbc.com/2021/07/01/new-digital-payments-spur-questions-over-consumer-privacy-security-.html* (''Threats over cyber security have become a growing concern as more people turn to online payments.''). *See also* Vaibhav Goel, Deepa Mahajan, Marie-Claude Nadeau, Owen Sperling, & Stephanie Yeh, *New trends in US consumer digital payments,* McKinsey & Company (Oct. 2021), *available at https://www.mckinsey.com/industries/financial-services/our-insights/banking-matters/new-trends-in-us-consumer-digital-payments.*

[9] *See The Cost of Third-Party Cybersecurity Risk Management,* Ponemon Institute LLC (Mar. 2019), *available at https://info.cybergrx.com/ponemon-report* (''Third-party breaches remain a dominant

Continued

incidents involving third party service provider vulnerabilities are becoming more frequent.[10] Additionally, cyber criminals are using increasingly sophisticated methods to execute their attacks.[11]

With an increase in the prevalence of cybersecurity incidents, there is an increased risk of the effect of cybersecurity incidents on the economy and registrants. Large scale cybersecurity attacks can have systemic effects on the economy as a whole, including serious effects on critical infrastructure and national security.[12] Public companies of all sizes and operating in all industries are susceptible to cybersecurity incidents that can stem from intentional or unintentional acts.[13] Additionally, senior management and boards of directors of public companies have become increasingly concerned about cybersecurity threats.[14] In a 2019 survey, chief executive officers of the largest 200 global companies rated '''national and corporate cybersecurity' as the number one threat to business growth and the international economy in the next 5 or 10 years.'' [15]

The cost to companies and their investors of cybersecurity incidents is rising and doing so at an increasing rate.[16] The types of costs and adverse consequences that companies may incur or experience as a result of a cybersecurity incident include the following:[17]

- Costs due to business interruption, decreases in production, and delays in product launches;
- Payments to meet ransom and other extortion demands;
- Remediation costs, such as liability for stolen assets or information, repairs of system damage, and incentives to customers or business partners in an effort to maintain relationships after an attack;
- Increased cybersecurity protection costs, which may include increased insurance premiums and the costs of making organizational changes, deploying additional personnel and protection technologies, training employees, and engaging third-party experts and consultants;
- Lost revenues resulting from intellectual property theft and the unauthorized use of proprietary information or the failure to retain or attract customers following an attack;
- Litigation and legal risks, including regulatory actions by state and federal governmental authorities and non-U.S. authorities;
- Harm to employees and customers, violation of privacy laws, and reputational damage that adversely affects customer or investor confidence; and
- Damage to the company's competitiveness, stock price, and long-term shareholder value.

As indicated by the examples enumerated above, the potential costs and damage that can stem from a material cybersecurity incident are extensive. Many smaller companies have been targets of cybersecurity attacks so severe that the companies have gone out of business as a result.[18] These direct and indirect financial costs can negatively impact stock prices,[19] as well as short-term and long-term shareholder value. To mitigate the potential costs and damage that can result from a material cybersecurity incident, management and boards of directors may establish and maintain effective risk management strategies to address cybersecurity risks.[20]

Recent research suggests that cybersecurity is among the most critical governance-related issues for investors, especially U.S. investors.[21] Some

security challenge for organizations, with over 63% of breaches linked to a third party.''); *see Digital Transformation & Cyber Risk: What You Need to Know Stay Safe,* Ponemon Sullivan Privacy Report (June 2020), *available at https://ponemonsullivanreport.com/2020/07/digital-transformation-cyber-risk-what-you-need-to-know-to-stay-safe/* (although companies are increasingly reliant on third parties, ''63% of respondents say their organizations have difficulty ensuring there is a secure cloud environment.''). *See, e.g., Cost of Data Breach Report 2021,* IBM (July 2021), *available at https://www.ibm.com/security/data-breach* (finding 15% of the initial cybersecurity attack vectors were caused by cloud misconfiguration).

[10] *See Data Risk in the Third-Party Ecosystem: Second Annual Study,* Ponemon Institute LLC (Sept. 2017) *available at https://insidecybersecurity.com/sites/insidecybersecurity.com/files/documents/sep2017/cs2017_0340.pdf* (noting that ''Data breaches caused by third parties are on the rise.''). *See e.g., The Cost of Third Party Cybersecurity Risk Management,* Ponemon Institute LLC (Mar. 2019), *available at https://www.cybergrx.com/resources/research-and-insights/ebooks-and-reports/the-cost-of-third-party-cybersecurity-risk-management* (''Over 53% of respondents have experienced a third-party data breach in the past 2 years at an average cost of $7.5 million.'').

[11] *See Cybersecurity: How do you rise above the waves of a perfect storm?, supra* note 6.

[12] *See* Cyber-Risk Oversight 2020, Key Principles and Practical Guidance for Corporate Boards (2020), nacd, *available at http://isalliance.org/wp-content/uploads/2020/02/RD-3-2020_NACD_Cyber_Handbook__WEB_022020.pdf* (''According to the Global Risks Report 2019, business leaders in advanced economies rank cyberattacks among their top concerns. A serious attack can destroy not only a company's financial health but also have systemic effects causing harm to the economy as a whole and even national security.''). *See also The Cost of Malicious Cyber Activity to the U.S. Economy* (Feb. 16, 2018), White H. Council of Econ. Advisers, *available at https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/02/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf* (''An attack have significant spillover effects to corporate partners, customers, and suppliers.'') and Testimony of Robert Kolasky, Director, National Risk Management Center, Cybersecurity and Infrastructure Security Agency (CISA), *Securing U.S. Surface Transportation from Cyber Attacks,* U.S. House of Representatives, Committee on Homeland Security (Feb. 26, 2019), *available at https://www.congress.gov/116/meeting/house/108931/witnesses/HHRG-116-HM07-Wstate-KolaskyB-20190226.pdf. See also Exec. Order No. 14028, Improving the Nation's Cybersecurity,* (May 12, 2021), 86 FR 26633, *available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/.*

[13] *See Economic Report of the President: Together with The Annual Report of the Council of Economic Advisers,* (Mar. 2019), *available at https://www.govinfo.gov/content/pkg/ERP-2019/pdf/ERP-2019.pdf* (''Drawing on new data, we document that cyber vulnerabilities are quite prevalent—even in Fortune 500 companies with significant resources at their disposal.'').

[14] NACD, *Cyber-Risk Oversight2020, Key Principles and Practical Guidance for Corporate Boards, supra* note 12.

[15] *See EY CEO Imperative Study 2019,* July 2019, *available at https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/growth/ey-ceo-imperative-exec-summ-single-spread-final.pdf.*

[16] *See Cost of Data Breach Report 2021,* IBM Security (July 2021), *available at https://www.ibm.com/security/data-breach* (''The average total cost of a data breach increased by nearly 10% year over year, the largest single year cost increase in the last seven years.'').

[17] *See e.g., 2018 Interpretive Release*; and Shinichi Kamiya, Jun-Koo Kang, Jungmin Kim, Andreas Milidonis, & Rene M. Stulz, *Risk management, firm reputation, and the impact of successful cyberattacks on target firms,* 139 J. of Fin. Econ. at 747, 749 (2021).

[18] *See* Testimony of Dr. Jane LeClair, Chief Operating Officer, National Cybersecurity Institute at Excelsior College, before the U.S. House of Representatives Committee on Small Business (Apr. 22, 2015), *available at http://docs.house.gov/meetings/SM/SM00/20150422/103276/HHRG-114-SM00-20150422-SD003-U4.pdf* (''Fifty percent of [small businesses] SMB's have been the victims of cyber attack and over 60 percent of those attacked go out of business. Often SMB's do not even know they have been attacked until it is too late.'').

[19] *See infra* note 101, section III.A.

[20] *See* NACD, *Cyber-Risk Oversight2020, Key Principles and Practical Guidance for Corporate Boards, supra* note 12.

[21] *2019 Responsible Investing Survey Key Findings,* RBC Glob. Asset Mgmt. (2019), *available at https://global.rbcgam.com/sitefiles/live/documents/pdf/rbc-gam-responsible-investing-survey-key-findings-2019.pdf.* This was a study developed by RBC Global Asset Management and BlueBay Asset Management LLP and distributed to a range of constituencies including institutional asset owners, consultants, clients, P&I Research Advisory Panel members, and members of the Pensions & Investment database. Study participants included individuals in Canada, Europe, Asia, and the United States. Two thirds of all respondents identified cybersecurity as an issue they were concerned about. The percentages were higher for the U.S., where out of all the environmental, social, and governance (''ESG'')-issues, the highest percentage of respondents ranked cybersecurity as the most concerning issue. *See also* J.P. Morgan Global Research, *Why is Cybersecurity Important to ESG Frameworks?,* J.P. Morgan Glob. Rsch. (Aug. 19, 2021), *available at https://www.jpmorgan.com/insights/research/why-is-cybersecurity-important-to-esg. See also Cyber security: Don't report on ESG without it* (2021), kpmg, *available at https://advisory.kpmg.us/articles/2021/cyber-security-report-on-esg.html.*

investors have been seeking information regarding registrants' cybersecurity risk management, strategy, and governance practices,[22] and there is evidence that the disclosure of cybersecurity incidents can affect both a registrant's reputation and its share price.[23] There may also be a positive correlation between a registrant's stock price and investments in certain cybersecurity technology.[24] Thus, whether and how a registrant is managing cybersecurity risks could impact an investor's return on investment and would be decision-useful information in an investor's investment or considerations.

We believe investors would benefit from more timely and consistent disclosure about material cybersecurity incidents, because of the potential impact that such incidents can have on the financial performance or position of a registrant. We also believe that investors would benefit from greater availability and comparability of disclosure by public companies across industries regarding their cybersecurity risk management, strategy, and governance practices in order to better assess whether and how companies are managing cybersecurity risks. The proposal reflects these policy goals.

Specifically, in this release, we are proposing to amend Form 8–K to require current disclosure of material cybersecurity incidents. We are also proposing to add new Item 106 of Regulation S–K that would require a registrant to: (1) Provide updated disclosure in periodic reports about previously reported cybersecurity incidents; (2) describe its policies and procedures, if any, for the identification and management of risks from cybersecurity threats, including whether the registrant considers cybersecurity risks as part of its business strategy, financial planning, and capital allocation; and (3) require disclosure about the board's oversight of cybersecurity risk, management's role in assessing and managing such risk, management's cybersecurity expertise, and management's role in implementing the registrant's cybersecurity policies, procedures, and strategies. We also are proposing to amend Item 407 of Regulation S–K to require disclosure of whether any member of the registrant's board has expertise in cybersecurity, and if so, the nature of such expertise.[25]

A. Existing Regulatory Framework and Interpretive Guidance Regarding Cybersecurity Disclosure

Although there are no disclosure requirements in Regulation S–K or S–X that explicitly refer to cybersecurity risks or incidents, in light of the increasing significance of cybersecurity incidents, over the past decade the Commission and staff have issued interpretive guidance concerning the application of existing disclosure and other requirements under the federal securities laws to cybersecurity risks and incidents. In 2011, the Division of Corporation Finance issued interpretive guidance (''2011 Staff Guidance''), providing the Division's views concerning operating companies' disclosure obligations relating to cybersecurity risks and incidents.[26]

In 2018, recognizing the ''the frequency, magnitude and cost of cybersecurity incidents,'' and the need for investors to be informed about material cybersecurity risks and incidents in a timely manner, the Commission issued interpretive guidance (''2018 Interpretive Release'') to assist operating companies in determining when they may be required to disclose information regarding cybersecurity risks and incidents under existing disclosure rules.[27] The 2018 Interpretive Release reinforced and expanded upon the 2011 Staff Guidance and also addressed the importance of cybersecurity policies and procedures, as well as the application of insider trading prohibitions in the context of cybersecurity.

Specifically, the 2018 Interpretive Release stated that companies should consider the materiality of cybersecurity risks and incidents when preparing the disclosure required in registration statements under the Securities Act and Exchange Act, as well as in periodic and current reports under the Exchange Act. The 2018 Interpretive Release identified the following existing provisions in Regulations S–K and S–X that may require disclosure about cybersecurity risks, governance, and incidents: [28]

- Item 105 of Regulation S–K (Risk Factors) [29]—the 2018 Interpretive Release sets forth issues for companies to consider in evaluating the need for cybersecurity risk factor disclosure, including risks arising in connection with acquisitions.
- Item 303 of Regulation S–K (Management's Discussion and Analysis of Financial Condition and Results of Operations) [30]—the 2018 Interpretive Release discusses how the costs of ongoing cybersecurity efforts, the costs and other consequences of cybersecurity incidents, and the risks of potential cybersecurity incidents, among other matters, can inform a company's management's discussion and analysis. The 2018 Interpretive Release describes a wide array of potential costs that may be associated with cybersecurity issues and incidents such as loss of intellectual property and reputational harm.
- Item 101 of Regulation S–K (Description of Business) [31]—the 2018 Interpretive Release notes that if cybersecurity incidents or risks materially affect a company's products,

[22] *See* Harvard Law School Forum on Corporate Governance Blog, posted by Steve W. Klemash, Jamie C. Smith, and Chuck Seets, *What Companies are Disclosing About Cybersecurity Risk and Oversight,* (posted Aug. 25, 2020) *available at https://corpgov.law.harvard.edu/2020/08/25/what-companies-are-disclosing-about-cybersecurity-risk-and-oversight* (''Because the threat of a breach cannot be eliminated, some investors stressed that they are particularly interested in resiliency, including how (and how quickly) companies are detecting and mitigating cybersecurity incidents. Some are asking their portfolio companies about specific cybersecurity practices, such as whether the company has had an independent assessment of its cybersecurity program, and some are increasingly focusing on data privacy and whether companies are adequately identifying and addressing related consumer concerns and expanding regulatory requirements.'').

[23] *See* Shinichi Kamiya, Jun-Koo Kang, Jungmin Kim, Andreas Milidonis, & Rene M. Stulz, *Risk management, firm reputation, and the impact of successful cyberattacks on target firms,* 139 J. of Fin. Econ. at 747, 749 (2021); Georgios Spanos, and Lefteris Angelis, *The Impact of Information Security Events to the Stock Market: A Systematic Literature Review,* 58 Comput. & Sec. at 216, 226 (2016) (''Respectively, negative information security events, as the security breaches, have a negative impact to the stock price of the breached firms in the majority of the studies.'').

[24] *Id.*

[25] Proposed Item 407(j) of Regulation S–K.

[26] *See* CF Disclosure Guidance: Topic No. 2—Cybersecurity (Oct. 13, 2011), *available at https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.*

[27] *See* Commission Statement and Guidance on Public Company Cybersecurity Disclosures, Release No. 33–10459 (Feb. 26, 2018) No. 33–10459 (Feb. 21, 2018) [83 FR 8166], *available at https://www.sec.gov/rules/interp/2018/33-10459.pdf.* In 2018, the Commission also issued a Report of Investigation pursuant to Section 21(a) of the Exchange Act regarding certain cyber-related frauds perpetrated against public companies and related internal accounting controls requirements. The report cautioned that public companies subject to the internal accounting controls requirements of Exchange Act Section 13(b)(2)(B) should consider cyber threats when implementing their internal accounting controls. The report is based on SEC Enforcement Division investigations that focused on business email compromises in which perpetrators posed as company executives or vendors and used emails to dupe company personnel into sending large sums to bank accounts controlled by the perpetrators. *See Report of Investigation Pursuant to 21(a) of the Securities Exchange Act of 1934 Regarding Certain Cyber-Related Frauds Perpetrated Against Public Companies and Related Internal Accounting Controls Requirements,* SEC Release No. 34–84429 (Oct. 16, 2018).

[28] There are corresponding provisions in Form 20–F for foreign private issuers.

[29] *See also* Item 3.D of Form 20–F. Please note that Risk Factors was designated as Regulation S–K Item 503 at the time the 2018 Interpretive Release was issued.

[30] *See also* Item 5 of Form 20–F.

[31] *See also* Item 4.B of Form 20–F.

services, relationships with customers or suppliers, or competitive conditions, the company must provide appropriate disclosure.

- Item 103 of Regulation S–K (Legal Proceedings)—the 2018 Interpretive Release explains that this item may require disclosure about material pending legal proceedings that relate to cybersecurity issues.
- Item 407 of Regulation S–K (Corporate Governance) [32]—the 2018 Interpretive Release clarifies that a company must describe how the board administers its risk oversight function to the extent that cybersecurity risks are material to a company's business, including a description of the nature of the board's role in overseeing the management of such risks.
- Regulation S–X Financial Disclosures—the 2018 Interpretive Release notes the Commission's expectation that a company would design its financial reporting and control systems to provide reasonable assurance that information about the range and magnitude of the financial impacts of a cybersecurity incident would be incorporated into its financial statements on a timely basis as that information becomes available.

The 2018 Interpretive Release also addresses the importance of a company's adoption of disclosure controls and procedures that cause the company to appropriately record, process, summarize, and report to investors material information related to cybersecurity risks and incidents.[33] In addition, the 2018 Interpretive Release reminds companies, their directors, officers, and other corporate insiders of the need to comply with insider trading laws in connection with information about cybersecurity risks and incidents, including vulnerabilities and breaches. The 2018 Interpretive Release further discusses disclosure obligations that companies may have under 17 CFR 243 (''Regulation FD'') in connection with cybersecurity matters. The guidance set forth in both the 2011 Staff Guidance and the 2018 Interpretive Release would remain in place if the Commission adopts the proposed rule amendments described in this release.

[32] This disclosure also is required by Item 7 of Schedule 14A.

[33] *See supra* note 4, 2018 Interpretive Release at 8167 (''Crucial to a public company's ability to make any required disclosure of cybersecurity risks and incidents in the appropriate timeframe are disclosure controls and procedures that provide an appropriate method of discerning the impact that such matters may have on the company and its business, financial condition, and results of operations, as well as a protocol to determine the potential materiality of such risks and incidents.'').

B. Current Disclosure Practices

The majority of registrants reporting material cybersecurity incidents do so in a Form 8–K, press release, or periodic report. Although we are unable to determine the number of material cybersecurity incidents that either are not being disclosed or not being disclosed in a timely manner, the staff has observed certain cybersecurity incidents that were reported in the media but that were not disclosed in a registrant's filings. Further, the staff in the Division of Corporation Finance's review of Form 8–K filings, as well as Form 10–K and Form 20–F filings, has shown that the nature of the cybersecurity incident disclosure varies widely. In these filings, companies provide different levels of specificity regarding the cause, scope, impact, and materiality of cybersecurity incidents. For example, some companies provide a materiality analysis, disclose the estimated costs of an incident, discuss their engagement of cybersecurity professionals, and/or explain the remedial steps they have taken or are taking in response to a cybersecurity incident, while others do not provide such disclosure or provide much less detail in their disclosure on these topics.

The staff has also observed that, while the majority of registrants that are disclosing cybersecurity risks appear to be providing such disclosures in the risk factor section of their annual reports on Form 10–K, the disclosures are sometimes blended with other unrelated disclosures, which makes it more difficult for investors to locate, interpret, and analyze the information provided. Further, the staff has observed a divergence in these disclosures by industry and that, smaller reporting companies generally provide less cybersecurity disclosure as compared to larger registrants. One report noted a disconnect in which the industries experiencing the most high profile cybersecurity incidents provided disclosure with the ''least amount of information.'' [34] While cybersecurity risks and attacks may disproportionately affect certain industries at different times and in different ways, cybersecurity risks and threats may be dynamic; it is foreseeable and perhaps even predictable that malicious actors will adapt their strategies and target companies in any industry where there are perceived vulnerabilities.

Registrants' disclosures of both material cybersecurity incidents and cybersecurity risk management and governance have improved since the issuance of the 2011 Staff Guidance and the 2018 Interpretive Release.[35] Yet, current reporting may contain insufficient detail [36] and the staff has observed that such reporting is inconsistent, may not be timely, and can be difficult to locate. We believe that investors would benefit from enhanced disclosure about registrants' cybersecurity incidents and cybersecurity risk management and governance practices, including if the registrant's board of directors has expertise in cybersecurity matters, and we are proposing rule amendments to enhance disclosure in those areas.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed rule amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed Amendments

A. Overview

Cybersecurity risks and incidents can impact the financial performance or position of a company. Consistent, comparable, and decision-useful disclosures regarding a registrant's cybersecurity risk management, strategy, and governance practices, as well as a registrant's response to material cybersecurity incidents, would allow investors to understand such risks and incidents, evaluate a registrant's risk management and governance practices regarding those risks, and better inform their investment and voting decisions.

The proposed rules would require current and periodic reporting of

[34] Moody's Investors Service, Research Announcement, ''Cybersecurity disclosures vary greatly in high-risk industries,'' (Oct. 3, 2019), *available at https://www.moodys.com/research/Moodys-Cybersecurity-disclosures-vary-greatly-in-high-risk-industries--PBC_1196854.*

[35] Stephen Klemash and Jamie Smith, *What companies are disclosing about cybersecurity risk and oversight,* EY, supra note 6 (EY researchers looked at cybersecurity-related disclosures in the proxy statements and Form 10–K filings for the 76 ''Fortune 100'' companies that filed those documents from 2018 through May 31, 2020. Their finding indicated that, ''[m]any companies are enhancing their cybersecurity disclosures, with modest increases across most of the disclosures tracked.'').

[36] One report notes ''the average public company's cyber disclosure contains insufficient detail for investors looking to evaluate its risk profile and to understand which remediation strategies, if any, it has implemented to control for the identified risks.'' NACD et al., *The State of Cyber-Risk Disclosures of Public Companies* at 3 (Mar. 2021) *available at https://www.nacdonline.org/insights/publications.cfm?ItemNumber=71711.* This same report contends (and cites other sources that argue) that the 2018 Interpretive Release alone has not resulted in adequate disclosures to investors. *Id.* at 4.

material cybersecurity incidents. Additionally, we are proposing amendments that would require periodic disclosures about a registrant's policies and procedures to identify and manage cybersecurity risk, including the impact of cybersecurity risks on the registrant's business strategy; management's role and expertise in implementing the registrant's cybersecurity policies, procedures, and strategies; and the board of directors' oversight role, and cybersecurity expertise, if any.

Specifically, we are proposing to:

- Amend Form 8–K to add Item 1.05 to require registrants to disclose information about a cybersecurity incident within four business days after the registrant determines that it has experienced a material cybersecurity incident; [37]
- Amend Forms 10–Q and 10–K to require registrants to provide updated disclosure relating to previously disclosed cybersecurity incidents, as specified in proposed Item 106(d) of Regulation S–K. We also propose to amend these forms to require disclosure, to the extent known to management, when a series of previously undisclosed individually immaterial cybersecurity incidents has become material in the aggregate.[38]
- Amend Form 10–K to require disclosure specified in proposed Item 106 regarding:
  - A registrant's policies and procedures, if any, for identifying and managing cybersecurity risks; [39]
  - A registrant's cybersecurity governance, including the board of directors' oversight role regarding cybersecurity risks; [40] and
  - Management's role, and relevant expertise, in assessing and managing cybersecurity related risks and implementing related policies, procedures, and strategies.[41]
- Amend Item 407 of Regulation S–K to require disclosure about if any member of the registrant's board of directors has cybersecurity expertise.[42]
- Amend Form 20–F to require foreign private issuers (''FPIs'') [43] to provide cybersecurity disclosures in their annual reports filed on that form that are consistent with the disclosure that we propose to require in the domestic forms;
- Amend Form 6–K to add ''cybersecurity incidents'' as a reporting topic; and
- Require that the proposed disclosures be provided in Inline XBRL.[44]

B. Reporting of Cybersecurity Incidents on Form 8–K

1. Overview of Proposed Item 1.05 of Form 8–K

There is growing concern that material cybersecurity incidents [45] are underreported [46] and that existing reporting may not be sufficiently timely.[47] We are proposing to address these concerns by requiring registrants to disclose material cybersecurity incidents in a current report on Form 8–K within four business days after the registrant determines that it has experienced a material cybersecurity incident.[48]

Specifically, we propose to amend Form 8–K by adding new Item 1.05 that would require a registrant to disclose the following information about a material cybersecurity incident, to the extent the information is known at the time of the Form 8–K filing:

- When the incident was discovered and whether it is ongoing;
- A brief description of the nature and scope of the incident;
- Whether any data was stolen, altered, accessed, or used for any other unauthorized purpose;
- The effect of the incident on the registrant's operations; and
- Whether the registrant has remediated or is currently remediating the incident.

We believe that this information would provide timely and relevant disclosure to investors and other market participants (such as financial analysts, investment advisers, and portfolio managers) and enable them to assess the possible effects of a material cybersecurity incident on the registrant, including any long-term and short-term financial effects or operational effects. While registrants should provide disclosure responsive to the enumerated items to the extent known at the time of filing of the Form 8–K, we would not expect a registrant to publicly disclose specific, technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident.[49]

We believe that the proposed requirement to file an Item 1.05 Form 8–K within four business days after the registrant determines that it has experienced a material cybersecurity incident would significantly improve the timeliness of cybersecurity incident disclosures, as well as provide investors with more standardized and comparable disclosures.[50]

We are proposing that the trigger for an Item 1.05 Form 8–K is the date on which a registrant determines that a cybersecurity incident it has experienced is material, rather than the date of discovery of the incident, so as to focus the Form 8–K disclosure on

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[37] Proposed Item 1.05.

[38] Proposed Item 106(d) of Regulation S–K.

[39] Proposed Item 106(b) of Regulation S–K.

[40] Proposed Item 106(c)(1) of Regulation S–K.

[41] Proposed Item 106(c)(2) of Regulation S–K.

[42] Proposed Item 407(j).

[43] An FPI is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents; and (2) any of the following: (i) A majority of its officers or directors are citizens or residents of the U.S.; (ii) more than 50% of its assets are located in the U.S.; or (iii) its business is principally administered in the U.S. *See* 17 CFR 230.405. *See also* 17 CFR 240.3b–4(c).

[44] Proposed Rule 405 of Regulation S–T.

[45] *See infra* Section II.D.3 for a discussion on the proposed definition of ''cybersecurity incident.''

[46] *See New Study Reveals Cybercrime May Be Widely Underreported—Even When Laws Mandate Disclosure,* ISACA Press Release (June 3, 2019), *available at https://www.isaca.org/why-isaca/about-us/newsroom/press-releases/2019/new-study-reveals-cybercrime-may-be-widely-underreported-even-when-laws-mandate-disclosure. See also* Gerrit De Vynck, *Many ransomware attacks go unreported. The FBI and Congress want to change that.* Wash. Post (July 27, 2021), *available at https://www.washingtonpost.com/technology/2021/07/27/fbi-congress-ransomware-laws/* (quoting Eric Goldstein, executive assistant director at Cybersecurity & Infrastructure Security Agency (CISA), a federal agency created in 2018 to protect the U.S. from cyberattacks, as stating, ''[w]e believe that only about a quarter of ransomware intrusions are actually reported[.]'').

[47] *See also infra* section III.C(1)(a).

[48] As will be discussed in Section II.D, we propose to define the term ''cybersecurity incident'' as an unauthorized occurrence on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein. We also propose to define the term ''information systems'' as ''information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of a registrant's information to maintain or support the registrant's operations.'' The definitions of ''cybersecurity incident'' and ''information systems'' as proposed in Item 106 of Regulation S–K would also apply to such terms as used in proposed Item 1.05 of Form 8–K.

[49] *See also* 2018 Interpretive Release at Section II.A.1. Any material information not known or disclosable at the time of the Form 8–K filing would need to be updated in future periodic reports in response to proposed Item 106(d) of Regulation S–K. *See* discussion *infra* at Section II.C.1.

[50] If a triggering determination occurs within four business days before a registrant's filing of a Form 10–Q or Form 10–K, the Commission staff generally has not objected to the registrant satisfying its Form 8–K reporting obligation by including the disclosure in Item 5 (Other Information) of Part II of its Form 10–Q or Item 9B (Other Information) of its Form 10–K. *See* SEC Division of Corporation Finance, Exchange Act *Form 8-K Compliance and Disclosure Interpretations* (updated Dec. 22, 2017), Question 1, *available at https://www.sec.gov/divisions/corpfin/form8kfaq.htm.*

incidents that are material to investors. In some cases, the date of the registrant's materiality determination may coincide with the date of discovery of an incident, but in other cases the materiality determination will come after the discovery date. If we adopt the date of the materiality determination as the Form 8–K reporting trigger, as proposed, we expect registrants to be diligent in making a materiality determination in as prompt a manner as feasible. To address any concern that some registrants may delay making such a determination to avoid a disclosure obligation, Instruction 1 to proposed Item 1.05 states: ''a registrant shall make a materiality determination regarding a cybersecurity incident as soon as reasonably practicable after discovery of the incident.''

What constitutes ''materiality'' for purposes of the proposed cybersecurity incidents disclosure would be consistent with that set out in the numerous cases addressing materiality in the securities laws, including: *TSC Industries, Inc.* v. *Northway, Inc.,*[51] *Basic, Inc.* v. *Levinson,*[52] and *Matrixx Initiatives, Inc.* v. *Siracusano.*[53] Information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' [54] in making an investment decision, or if it would have ''significantly altered the 'total mix' of information made available.'' [55] In articulating this materiality standard, the Supreme Court recognized that ''[d]oubts as to the critical nature'' of the relevant information ''will be commonplace.'' But ''particularly in view of the prophylactic purpose'' of the securities laws, and ''the fact that the content'' of the disclosure ''is within management's control, it is appropriate that these doubts be resolved in favor of those the statute is designed to protect,'' namely investors.[56]

A materiality analysis is not a mechanical exercise, nor should it be based solely on a quantitative analysis of a cybersecurity incident. Rather, registrants would need to thoroughly and objectively evaluate the total mix of information, taking into consideration all relevant facts and circumstances surrounding the cybersecurity incident, including both quantitative and qualitative factors, to determine whether the incident is material. Even if the probability of an adverse consequence is relatively low, if the magnitude of the loss or liability is high, the incident may still be material; materiality ''depends on the significance the reasonable investor would place on'' the information.[57] Thus, under the proposed rules, when a cybersecurity incident occurs, registrants would need to carefully assess whether the incident is material in light of the specific circumstances presented by applying a well-reasoned, objective approach from a reasonable investor's perspective based on the total mix of information.

2. Examples of Cybersecurity Incidents That May Require Disclosure Pursuant to Proposed Item 1.05 of Form 8–K

The following is a non-exclusive list of examples of cybersecurity incidents [58] that may, if determined by the registrant to be material, trigger the proposed Item 1.05 disclosure requirement:

- An unauthorized incident that has compromised the confidentiality, integrity, or availability of an information asset (data, system, or network); or violated the registrant's security policies or procedures. Incidents may stem from the accidental exposure of data or from a deliberate attack to steal or alter data;
- An unauthorized incident that caused degradation, interruption, loss of control, damage to, or loss of operational technology systems;
- An incident in which an unauthorized party accessed, or a party exceeded authorized access, and altered, or has stolen sensitive business information, personally identifiable information, intellectual property, or information that has resulted, or may result, in a loss or liability for the registrant;
- An incident in which a malicious actor has offered to sell or has threatened to publicly disclose sensitive company data; or
- An incident in which a malicious actor has demanded payment to restore company data that was stolen or altered.

3. Ongoing Investigations Regarding Cybersecurity Incidents

Proposed Item 1.05 would not provide for a reporting delay when there is an ongoing internal or external investigation related to the cybersecurity incident. As the Commission stated in the 2018 Interpretive Release, while an ongoing investigation might affect the specifics in the registrant's disclosure, ''an ongoing internal or external investigation—which often can be lengthy—would not on its own provide a basis for avoiding disclosures of a material cybersecurity incident.'' [59] Additionally, any such delay provision could undermine the purpose of proposed Item 1.05 of providing timely and consistent disclosure of cybersecurity incidents given that investigations and resolutions of cybersecurity incidents may occur over an extended period of time and may vary widely in timing and scope. At the same time, we recognize that a delay in reporting may facilitate law enforcement investigations aimed at apprehending the perpetrators of the cybersecurity incident and preventing future cybersecurity incidents. On balance, it is our current view that the importance of timely disclosure of cybersecurity incidents for investors would justify not providing for a reporting delay.

Many states have laws that allow companies to delay providing public notice about a data breach incident or notifying certain constituencies of such an incident if law enforcement determines that notification will impede a civil or criminal investigation. A registrant may have obligations to report incidents at the state or federal level (to customers, consumer credit reporting entities, state or federal regulators and law enforcement agencies, etc.); those obligations are distinct from its obligations to disclose material information to its shareholders under the federal securities laws. To the extent that proposed Item 1.05 of Form 8–K would require disclosure in a situation in which a state law delay provision

[51] *TSC Indus.* v. *Northway,* 426 U.S. 438, 449 (1976).

[52] *Basic Inc.* v. *Levinson,* 485 U.S. 224, 232 (1988).

[53] 563 U.S. 27 (2011).

[54] *TSC Indus.* v. *Northway,* 426 U.S. at 449.

[55] *Id. See also* the definition of ''material'' in Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2.

[56] *TSC Indus.* v. *Northway,* 426 U.S. at 448.

[57] *Basic Inc.* v. *Levinson,* 485 U.S. at 240.

[58] As discussed *infra* in Section II.D, we propose to define cybersecurity incident as ''an unauthorized occurrence on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.'' We believe this term is sufficiently understood and broad enough to encompass incidents that could adversely affect a registrant's information systems or information residing therein, such as gaining access without authorization or by exceeding authorized access to such systems and information that could lead, for example, to the modification or destruction of systems and information. We also propose to define information systems as ''information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of a registrant's information to maintain or support the registrant's operations.'' The definitions of ''cybersecurity incident'' and ''information systems'' as proposed in Item 106 of Regulation S–K would also apply to such terms as used in proposed Item 1.05 of Form 8–K. *See infra* note 80.

[59] *See supra* note 33, 2018 Interpretive Release.

would excuse notification, there is a possibility a registrant would be required to disclose the incident on Form 8–K even though it could delay incident reporting under a particular state law. The proposed Form 8–K requirement would advance the objective of timely reporting of material cybersecurity incidents without the uncertainties of delay. It is critical to investor protection and well-functioning, orderly, and efficient markets that investors promptly receive information regarding material cybersecurity incidents.

4. Proposed Amendment to Form 6–K

FPIs are not required to file current reports on Form 8–K.[60] Instead, they are required to furnish on Form 6–K [61] copies of all information that the FPI: (i) Makes or is required to make public under the laws of its jurisdiction of incorporation, (ii) files, or is required to file under the rules of any stock exchange, or (iii) otherwise distributes to its security holders. We are proposing to amend General Instruction B of Form 6–K to reference material cybersecurity incidents among the items that may trigger a current report on Form 6–K. As with proposed Item 1.05 of Form 8–K, the proposed change to Form 6–K is intended to provide timely cybersecurity incident disclosure in a manner that is consistent with the general purpose and use of Form 6–K.

5. Proposed Amendments to the Eligibility Provisions of Form S–3 and Form SF–3 and Safe Harbor Provision in Exchange Act Rules 13a–11 and 15d–11

We are proposing to amend General Instruction I.A.3.(b) of Form S–3 and General Instruction I.A.2 of Form SF–3 to provide that an untimely filing on Form 8–K regarding new Item 1.05 would not result in loss of Form S–3 or Form SF–3 eligibility. Under our existing rules, the untimely filing on Form 8–K of certain specified items does not result in loss of Form S–3 or Form SF–3 eligibility, so long as Form 8–K reporting is current at the time the Form S–3 or SF–3 is filed. In the past, when we have adopted new disclosure requirements that differed from the traditional periodic reporting obligations of companies, we have acknowledged concerns about the potentially harsh consequences of the loss of Form S–3 or Form SF–3 eligibility, and addressed such concerns by specifying that untimely filing of Forms 8–K relating to certain topics would not result in the loss of Form S–3 or Form SF–3 eligibility.[62] For the same reason, we believe that it is appropriate to add proposed Item 1.05 to the list of Form 8–K items in General Instruction I.A.3.(b) of Form S–3 and General Instruction I.A.2 of Form SF–3.[63]

We are also proposing to amend Rules 13a–11(c) and 15d–11(c) under the Exchange Act to include new Item 1.05 in the list of Form 8–K items eligible for a limited safe harbor from liability under Section 10(b) or Rule 10b–5 under the Exchange Act.[64] In 2004, when the Commission adopted the limited safe harbor, the Commission noted its view that the safe harbor is appropriate if the triggering event for the Form 8–K requires management to make a rapid materiality determination.[65] While the registrant would need to file an Item 1.05 Form 8–K within four business days after the registrant determines that it has experienced a material cybersecurity incident, rather than within four business days after its discovery of the incident, we expect management to make a materiality determination about the incident as soon as reasonably practicable after its discovery of the incident.[66] In some cases, we expect that management would make a materiality determination coincident with discovering a cybersecurity incident and therefore file a Form 8–K very soon after the registrant experiences or discovers a cybersecurity incident. Therefore, we believe that it is appropriate to extend the safe harbor to this proposed new item.

Request for Comment

1. Would investors benefit from current reporting about material cybersecurity incidents on Form 8–K? Does the proposed Form 8–K disclosure requirement appropriately balance the informational needs of investors and the reporting burdens on registrants?

2. Would proposed Item 1.05 require an appropriate level of disclosure about a material cybersecurity incident? Would the proposed disclosures allow investors to understand the nature of the incident and its potential impact on the registrant, and make an informed investment decision? Should we modify or eliminate any of the specified disclosure items in proposed Item 1.05? Is there any additional information about a material cybersecurity incident that Item 1.05 should require?

3. Could any of the proposed Item 1.05 disclosures or the proposed timing of the disclosures have the unintentional effect of putting registrants at additional risk of future cybersecurity incidents? If so, how could we modify the proposal to avoid this effect? For example, should registrants instead provide some of the disclosures in proposed Item 1.05 in the registrant's next periodic report? If so, which disclosures?

4. We are proposing to require registrants to file an Item 1.05 Form 8–K within four business days after the registrant determines that it has experienced a material cybersecurity incident. Would the proposed four-business day filing deadline provide sufficient time for registrants to prepare the disclosures that would be required under proposed Item 1.05? Should we modify the timeframe in which a registrant must file a Form 8–K under proposed Item 1.05? If so, what timeframe would be more appropriate for making these disclosures?

5. Should there be a different triggering event for the Item 1.05 disclosure, such as the registrant's discovery that it has experienced a cybersecurity incident, even if the registrant has not yet been able to determine the materiality of the incident? If so, which information should be disclosed in Form 8–K based on a revised triggering event? Should we instead require disclosure only if the expected costs arising from a cybersecurity incident exceed a certain quantifiable threshold, *e.g.,* a percentage of the company's assets, equity, revenues or net income or alternatively a precise number? If so, what would be an appropriate threshold?

6. To what extent, if any, would the proposed Form 8–K incident reporting obligation create conflicts for a registrant with respect to other obligations of the registrant under federal or state law? How would any such conflicting obligations arise, and what mechanisms could the Commission use to ensure that registrants can comply with other laws and regulations while providing these

[60] *See* Exchange Act Rules 13a–11 and 15d–11 [17 CFR 240.13a–11 and 15d–11].

[61] 17 CFR 249.306.

[62] *See* Selective Disclosure and Insider Trading, Release No. 33–7881 (Aug. 15, 2000) [65 FR 51715 (Aug. 24, 2000)]; *see also* Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date, Release No. 33–8400 (Mar. 16, 2004) [69 FR 15593 (Mar. 25, 2004)] (the ''Additional Form 8–K Disclosure Release'').

[63] *See* Selective Disclosure and Insider Trading, Release No. 33–7881 (Aug. 15, 2000) [65 FR 51715]; Additional Form 8–K Disclosure Release.

[64] Rules 13a–11(c) and 15d–11(c) each provides that ''[n]o failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), or 6.03 of Form 8–K shall be deemed a violation of'' Section 10(b) of the Exchange Act or Rule 10b–5 thereunder.

[65] Additional Form 8–K Disclosure Release at 69 FR 15607.

[66] Instruction 1 to proposed Item 1.05 of Form 8–K.

timely disclosures to investors? What costs would registrants face in determining the extent of a potential conflict?

7. Should any rule provide that the Commission shall allow registrants to delay reporting of a cybersecurity incident where the Attorney General requests such a delay from the Commission based on the Attorney General's written determination that the delay is in the interest of national security?

8. We are proposing to include an instruction that ''a registrant shall make a materiality determination regarding a cybersecurity incident as soon as reasonably practicable after discovery of the incident.'' Is this instruction sufficient to mitigate the risk of a registrant delaying a materiality determination? Should we consider further guidance regarding the timing of a materiality determination? Should we, for example, suggest examples of timeframes that would (or would not), in most circumstances, be considered prompt?

9. Should certain registrants that would be within the scope of the proposed requirements, but that are subject to other cybersecurity-related regulations, or that would be included in the scope of the Commission's recently-proposed cybersecurity rules [67] for advisers and funds, if adopted, be excluded from the proposed requirements? For example, should the proposed Form 8–K reporting requirements or the other disclosure requirements described in this release, as applicable, exclude business development companies (''BDCs''),[68] or the publicly traded parent of an adviser?

10. As described further below, we are proposing to define cybersecurity incident to include an unauthorized occurrence on or through a registrant's ''information systems,'' which is proposed to include ''information resources owned or used by the registrant.'' Would registrants be reasonably able to obtain information to make a materiality determination about cybersecurity incidents affecting information resources that are used but not owned by them? Would a safe harbor for information about cybersecurity incidents affecting information resources that are used but not owned by a registrant be appropriate? If so, why, and what would be the appropriate scope of a safe harbor? What alternative disclosure requirements would provide investors with information about cybersecurity incidents and risks that affect registrants via information systems owned by third parties?

11. We are proposing that registrants be required to file rather than permitted to furnish an Item 1.05 Form 8–K. Should we instead permit registrants to furnish an Item 1.05 Form 8–K, such that the Form 8–K would not be subject to liability under Section 18 of the Exchange Act unless the registrant specifically states that the information is to be considered ''filed'' or incorporates it by reference into a filing under the Securities Act or Exchange Act?

12. We note above a non-exclusive list of examples that would merit disclosure under Item 1.05 of Form 8–K covers some, but not all, types of material cybersecurity incidents. Are there additional examples we should address? Should we include a non-exclusive list of examples in Item 1.05 of Form 8–K?

13. Should we include Item 1.05 in the Exchange Act Rules 13a-11 and 15d-11 safe harbors from public and private claims under Exchange Act Section 10(b) and Rule 10b-5 for failure to timely file a Form 8–K, as proposed?

14. Should we include Item 1.05, as proposed, in the list of Form 8–K items where failure to timely file a Form 8–K will not result in the loss of a registrant's eligibility to file a registration statement on Form S–3 and Form SF–3?

C. Disclosure About Cybersecurity Incidents in Periodic Reports

1. Updates to Previously Filed Form 8–K Disclosure

Proposed Item 106(d)(1) of Regulation S–K would require registrants to disclose any material changes, additions, or updates to information required to be disclosed pursuant to Item 1.05 of Form 8–K in the registrant's quarterly report filed with the Commission on Form 10–Q or annual report filed with the Commission on Form 10–K for the period (the registrant's fourth fiscal quarter in the case of an annual report) in which the material change, addition, or update occurred.

We are proposing this requirement to balance the need for prompt and timely disclosure regarding material cybersecurity incidents with the fact that a registrant may not have complete information about a material cybersecurity incident at the time it determines the incident to be material. Proposed Item 106(d)(1) provides a means for investors to receive regular updates regarding the previously reported incident when and for so long as there are material changes, additions, or updates during a given reporting period. For example, after filing the initial Form 8–K disclosure, the registrant may become aware of additional material information about the scope of the incident and whether any data was stolen or altered; the proposed Item 106(d)(1) disclosure requirements would allow investors to stay informed of such developments.

The registrant also may be able to provide information about the effect of the previously reported cybersecurity incident on its operations as well as a description of remedial steps it has taken, or plans to take, in response to the incident that was not available at the time of the initial Form 8–K filing.[69] In order to assist registrants in developing updated incident disclosure in its periodic reports, proposed Item 106(d)(1) provides the following non-exclusive examples of the type of disclosure that should be provided, if applicable:

- Any material impact of the incident on the registrant's operations and financial condition;
- Any potential material future impacts on the registrant's operations and financial condition;
- Whether the registrant has remediated or is currently remediating the incident; and
- Any changes in the registrant's policies and procedures as a result of the cybersecurity incident, and how the incident may have informed such changes.

[67] *See* Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, Release No. 34–94197 (Feb. 9, 2022) [87 FR 13524 (Mar. 9, 2022)] (''Investment Management Cybersecurity Proposing Release''). In this release, the Commission proposed new rules and rule amendments that would require: (i) Registered investment advisers (''advisers'') and investment companies (''funds'') to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks; (ii) advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission; (iii) advisers and funds to provide cyber-related disclosures to clients and investors; and (iv) advisers and funds to maintain certain records related to the proposed cybersecurity risk management obligations and the occurrence of cybersecurity incidents.

[68] For purposes of this release, the terms ''public companies,'' ''companies,'' and ''registrants,'' include issuers that are business development companies as defined in section 2(a)(48) of the Investment Company Act of 1940 (''Investment Company Act''), but not those investment companies registered under that Act.

[69] Notwithstanding proposed Item 106(d)(1), there may be situations where a registrant would need to file an amended Form 8–K to correct disclosure from the initial Item 1.05 Form 8–K, such as where that disclosure becomes inaccurate or materially misleading as a result of subsequent developments regarding the incident. For example, if the impact of the incident is determined after the initial Item 1.05 Form 8–K filing to be significantly more severe than previously disclosed, an amended Form 8–K may be required.

2. Disclosure of Cybersecurity Incidents That Have Become Material in the Aggregate

Proposed Item 106(d)(2) would require disclosure when a series of previously undisclosed individually immaterial cybersecurity incidents become material in the aggregate. Thus, registrants would need to analyze related cybersecurity incidents for materiality, both individually and in the aggregate. If such incidents become material in the aggregate, registrants would need to disclose: When the incidents were discovered and whether they are ongoing; a brief description of the nature and scope of such incidents; whether any data was stolen or altered; the impact of such incidents on the registrant's operations and the registrant's actions; and whether the registrant has remediated or is currently remediating the incidents.

While such incidents conceptually could take a variety of forms, an example would be where one malicious actor engages in a number of smaller but continuous cyber-attacks related in time and form against the same company and collectively, they are either quantitatively or qualitatively material, or both. Such incidents would need to be disclosed in the periodic report for the period in which a registrant has made a determination that they are material in the aggregate.

Request for Comment

15. Should we require registrants to disclose any material changes or updates to information that would be disclosed pursuant to proposed Item 1.05 of Form 8–K in the registrant's quarterly or annual report, as proposed? Are there instances, other than to correct inaccurate or materially misleading prior disclosures, when a registrant should be required to update its report on Form 8–K or file another Form 8–K instead of providing disclosure of material changes, additions, or updates in a subsequent Form 10–Q or Form 10–K?

16. Should we require a registrant to provide disclosure on Form 10–Q or Form 10–K when a series of previously undisclosed and individually immaterial cybersecurity incidents becomes material in the aggregate, as proposed? Alternatively, should we require a registrant to provide disclosure in Form 8–K, rather than in a periodic report, as proposed, when a series of previously undisclosed and individually immaterial cybersecurity incidents becomes material in the aggregate?

D. Disclosure of a Registrant's Risk Management, Strategy and Governance Regarding Cybersecurity Risks

1. Risk Management and Strategy

Companies typically address significant risks to their businesses by developing risk management systems, which may include policies and procedures for identifying, assessing, and managing the risks. These policies and procedures may then be subject to oversight by a company's management and board.[70] Policies and procedures reasonably designed to provide oversight, risk assessments, and incident responses may be adopted to help prevent or mitigate cyber-attacks and potentially prevent future attacks. Staff in the Division of Corporation Finance has observed that most of the registrants that disclosed a cybersecurity incident in 2021 did not describe their cybersecurity risk oversight and related policies and procedures. Some of these registrants provided only general disclosures, such as a reference to cybersecurity as one of the risks overseen by the board or a board committee.

We are proposing Item 106(b) of Regulation S–K to require registrants to provide more consistent and informative disclosure regarding their cybersecurity risk management and strategy. We believe that disclosure of the relevant policies and procedures, to the extent a registrant has established any, would benefit investors by providing greater transparency as to the registrant's strategies and actions to manage cybersecurity risks. For example, proposed disclosure about whether the registrant has a cybersecurity risk assessment program and undertakes activities designed to prevent, detect, and minimize effects of cybersecurity incidents can improve an investor's understanding of the registrant's cybersecurity risk profile. Given that a significant number of cybersecurity incidents pertain to third party service providers, the proposed rules would require disclosure concerning a registrant's selection and oversight of third-party entities as well.[71]

Additionally, cybersecurity risks may have an impact on a registrant's business strategy, financial outlook, or financial planning. Across industries, companies increasingly rely on information technology, collection of data, and use of digital payments as critical components of their business model and strategy. Their exposure to cybersecurity risks and previous cybersecurity incidents may affect these critical components, informing changes in their business model, financial condition, financial planning, and allocation of capital. For example, a company with a business model that relies highly on collecting and safeguarding sensitive and personally identifiable information from its customers may consider raising additional capital to invest in enhanced cybersecurity protection, improvements in its information security infrastructure, or employee cybersecurity training. Another company may examine the risks and decide that its business model should be adapted to minimize its collection of sensitive and personally identifiable information in order to reduce its risk exposure. These strategic decisions have implications for the company's financial planning and future financial performance. Disclosure about the impact of cybersecurity risks on business strategy would enable investors to assess whether companies will become more resilient or conversely, more vulnerable to cybersecurity risks in the future.

We also propose requiring disclosure of whether cybersecurity related risk and previous incidents have affected or are reasonably likely to affect the registrant's results of operations or financial condition. Investors would likely want to understand the financial impacts of cybersecurity risks and previous cybersecurity incidents in order to understand how these risks and incidents affect the company's financial performance or position, and thus the return on their investment. For example, a company that has previously experienced a cybersecurity incident may plan to provide compensation to consumers or it may anticipate regulatory fines or legal judgments as a result of the incident. These financial impacts would help investors understand the degree to which cybersecurity risks and incidents could affect the company's financial performance or position.

Proposed Item 106(b) would therefore require registrants to disclose its

[70] *See* Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Spotlight on Boards 2018,* Harv. L. Sch. F. on Corp. Governance (May 31, 2018), *available at https://corpgov.law.harvard.edu/2018/05/31/spotlight-on-boards-2018* (one of the board's responsibilities is to, ''[o]versee and understand the corporation's risk management and compliance efforts and how risk is taken into account in the corporation's business decision-making; respond to red flags if and when they arise.'').

[71] *See* Stephen Klemash and Jamie Smith, *What companies are disclosing about cybersecurity risk and oversight,* EY, supra note 6 (''Around a third of the disclosed data breaches related to cyber attacks of third-party service providers.'').

policies and procedures, if it has any, to identify and manage cybersecurity risks and threats, including: Operational risk; intellectual property theft; fraud; extortion; harm to employees or customers; violation of privacy laws and other litigation and legal risk; and reputational risk. Specifically, proposed Item 106(b) of Regulation S–K would require disclosure, as applicable, of whether: [72]

- The registrant has a cybersecurity risk assessment program and if so, provide a description of such program;
- The registrant engages assessors, consultants, auditors, or other third parties in connection with any cybersecurity risk assessment program;
- The registrant has policies and procedures to oversee and identify the cybersecurity risks associated with its use of any third-party service provider (including, but not limited to, those providers that have access to the registrant's customer and employee data), including whether and how cybersecurity considerations affect the selection and oversight of these providers and contractual and other mechanisms the company uses to mitigate cybersecurity risks related to these providers;
- The registrant undertakes activities to prevent, detect, and minimize effects of cybersecurity incidents;
- The registrant has business continuity, contingency, and recovery plans in the event of a cybersecurity incident;
- Previous cybersecurity incidents have informed changes in the registrant's governance, policies and procedures, or technologies;
- Cybersecurity related risk and incidents have affected or are reasonably likely to affect the registrant's results of operations or financial condition and if so, how; and
- Cybersecurity risks are considered as part of the registrant's business strategy, financial planning, and capital allocation and if so, how.

2. Governance

Disclosure regarding board oversight of a registrant's cybersecurity risk and the inclusion or exclusion of management from the oversight of cybersecurity risks and the implementation of related policies, procedures, and strategies impacts an investor's ability to understand how a registrant prepares for, prevents, or responds to cybersecurity incidents.[73] Accordingly, proposed Item 106(c) would require disclosure of a registrant's cybersecurity governance, including the board's oversight of cybersecurity risk and a description of management's role in assessing and managing cybersecurity risks, the relevant expertise of such management, and its role in implementing the registrant's cybersecurity policies, procedures, and strategies.[74]

Specifically, as it pertains to the board's oversight of cybersecurity risk, disclosure required by proposed Item 106(c)(1) would include a discussion, as applicable, of the following: [75]

- Whether the entire board, specific board members or a board committee is responsible for the oversight of cybersecurity risks;
- The processes by which the board is informed about cybersecurity risks, and the frequency of its discussions on this topic; and
- Whether and how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight.

This proposed disclosure about the board's oversight would inform investors about the role of the board in cybersecurity risk management, which may help inform their investment and voting decisions. Proposed Item 106(c)(1) would also reinforce the 2018 Interpretive Release, which states that the board's role in overseeing cybersecurity risks should be disclosed if ''cybersecurity risks are material to a company's business'' and that such disclosures should address how a board ''engages with management on cybersecurity issues'' and ''discharg[es] its [cybersecurity] risk oversight responsibility.'' [76]

Proposed Item 106(c)(2) would require a description of management's role in assessing and managing cybersecurity-related risks and in implementing the registrant's cybersecurity policies, procedures, and strategies. This description would include, but not be limited to, the following information: [77]

- Whether certain management positions or committees are responsible for measuring and managing cybersecurity risk, specifically the prevention, mitigation, detection, and remediation of cybersecurity incidents, and the relevant expertise of such persons or members;
- Whether the registrant has a designated chief information security officer,[78] or someone in a comparable position, and if so, to whom that individual reports within the registrant's organizational chart, and the relevant expertise [79] of any such persons;
- The processes by which such persons or committees are informed about and monitor the prevention, mitigation, detection, and remediation of cybersecurity incidents; and
- Whether and how frequently such persons or committees report to the board of directors or a committee of the board of directors on cybersecurity risk.

This proposed disclosure of how a registrant's management assesses and implements policies, procedures, and strategies to mitigate cybersecurity risks would be of importance to investors both as they understand how registrants are planning for cybersecurity risks and as they make decisions as to how best to allocate their capital.

3. Definitions

Proposed Item 106(a) defines the terms ''cybersecurity incident,'' ''cybersecurity threat,'' and ''information systems,'' as used in proposed Item 106 and proposed Form 8–K Item 1.05 as follows: [80]

[72] *See* proposed Item 106(b).

[73] *See* John F. Saverese et al., *Cybersecurity Oversight and Defense—A Board and Management Imperative,* Harv. L.Sch. F. on Corp. Governance (May 14, 2021), *available at https://corpgov.law.harvard.edu/2021/05/14/cybersecurity-oversight-and-defense-a-board-and-management-imperative/.*

[74] Proposed amendments to Form 10–K clarify that an asset-backed issuer (as defined in Item 1101 of Regulation AB) that does not have any executive officers or directors may omit the information required by 17 CFR 229.106(c) (Item 106(c) of Regulation S–K).

[75] *See* proposed Item 106(c)(1). In the case of a FPI with a two-tier board of directors, proposed Instruction 1 to Item 106(c) clarifies that the term ''board of directors'' means the supervisory or non-management board. In the case of a FPI meeting the requirements of 17 CFR 240.10A–3(c)(3), for purposes of proposed Item 106(c), the term, ''board of directors'' means the registrant's board of auditors (or similar body) or statutory auditors, as applicable.

[76] *See* 2018 Interpretive Release.

[77] *See* proposed Item 106(c)(2).

[78] The chief information security officer may be responsible for identifying and monitoring cybersecurity risks, communicating with senior management and the registrant's business units about acceptable risk levels, developing risk mitigation strategies, and implementing a security framework that protects the registrant's digital assets. *The Role of the CISO and the Digital Security Landscape,* isaca j. vol. 2, at 22, 23–29 (2019) *available at https://www.isaca.org/resources/isaca-journal/issues/2019/volume-2/the-role-of-the-ciso-and-the-digital-security-landscape.*

[79] Proposed Instruction 2 to Item 106(c) provides guidance that ''expertise'' in Item 106(c)(2)(i) and (ii) may include, for example: Prior work experience in cybersecurity; any relevant degrees or certifications; any knowledge, skills, or other background in cybersecurity.

[80] *See* proposed Item 106(a). These three terms are derived from a number of established sources. *See* Presidential Policy Directive—United States Cyber Incident Coordination (July 26, 2016) (''PPD–41''); 6 U.S.C. 1501 (2021); 44 U.S.C. 3502 (2021); 44 U.S.C. 3552 (2021); *see also* National Institute of Standards and Technology (NIST), Computer Security Resource Center Glossary (last visited Feb.

• *Cybersecurity incident* means an unauthorized occurrence on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

• *Cybersecurity threat* means any potential occurrence that may result in, an unauthorized effort to adversely affect the confidentiality, integrity or availability of a registrant's information systems or any information residing therein.

• *Information systems* means information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

What constitutes a ''cybersecurity incident'' for purposes of our proposal should be construed broadly and may result from any one or more of the following: An accidental exposure of data, a deliberate action or activity to gain unauthorized access to systems or to steal or alter data, or other system compromises or data breaches.[81]

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17. Should we adopt Item 106(b) and (c) as proposed? Are there other aspects of a registrant's cybersecurity policies and procedures or governance that should be required to be disclosed under Item 106, to the extent that a registrant has any policies and procedures or governance? Conversely, should we exclude any of the proposed Item 106 disclosure requirements?

18. Are the proposed definitions of the terms ''cybersecurity incident,'' ''cybersecurity threat,'' and ''information systems,'' in Item 106(a) appropriate or should they be revised? Are there other terms used in the proposed amendments that we should define?

19. The proposed rule does not define ''cybersecurity.'' We could define the term to mean, for example: ''any action, step, or measure to detect, prevent, deter, mitigate, or address any cybersecurity threat or any potential cybersecurity threat.'' Would defining ''cybersecurity'' in proposed Item 106(a) be helpful? Why or why not? If defining this term would be helpful, is the definition provided above appropriate, or is there another definition that would better define ''cybersecurity''?

20. Should we require the registrant to specify whether any cybersecurity assessor, consultant, auditor, or other service that it relies on is through an internal function or through an external third-party service provider? Would such a disclosure be useful for investors?

21. As proposed, a registrant that has not established any cybersecurity policies or procedures would not have to explicitly state that this is the case. If applicable, should a registrant have to explicitly state that it has not established any cybersecurity policies and procedures?

22. Are there concerns that certain disclosures required under Item 106 would have the potential effect of undermining a registrant's cybersecurity defense efforts or have other potentially adverse effects by highlighting a registrant's lack of policies and procedures related to cybersecurity? If so, how should we address these concerns while balancing investor need for a sufficient description of a registrant's policies and procedures for purposes of their investment decisions?

23. Should we exempt certain categories of registrants from proposed Item 106, such as smaller reporting companies, emerging growth companies, or FPIs? If so, which ones and why? How would any exemption impact investor assessments and comparisons of the cybersecurity risks of registrants? Alternatively, should we provide for scaled disclosure requirements by any of these categories of registrants, and if so, how?

24. Should we provide for delayed compliance or other transition provisions for proposed Item 106 for certain categories of registrants, such as smaller reporting companies, emerging growth companies, FPIs, or asset-backed securities issuers? Proposed Item 106(b), which would require companies to provide disclosures regarding existing policies and procedures for the identification and management of cybersecurity incidents, would be required in annual reports. Should the proposed Item 106(b) disclosures also be required in registration statements under the Securities Act and the Exchange Act?

25. To what extent would disclosure under proposed Item 106 overlap with disclosure required under Item 407(h) of Regulation S–K (''Board leadership structure and role in oversight'') with respect to board oversight of cybersecurity risks? To the extent there is significant overlap, should we expressly provide for the use of hyperlinks or cross-references in Item 106? Are there other approaches that would effectively decrease duplicative disclosure without being cumbersome for investors?

E. Disclosure Regarding the Board of Directors' Cybersecurity Expertise

Cybersecurity is already among the top priorities of many boards of directors[82] and cybersecurity incidents and other risks are considered one of the largest threats to companies.[83] Accordingly, investors may find disclosure of whether any board members have cybersecurity expertise to be important as they consider their investment in the registrant as well as their votes on the election of directors of the registrant.

We propose to amend Item 407 of Regulation S–K by adding paragraph (j) to require disclosure about the cybersecurity expertise of members of the board of directors of the registrant, if any. If any member of the board has cybersecurity expertise, the registrant would have to disclose the name(s) of any such director(s), and provide such detail as necessary to fully describe the nature of the expertise.[84]

The proposed requirements would build upon the existing disclosure requirements in Item 401(e) of Regulation S–K (business experience of directors) and Item 407(h) of Regulation

6, 2022), *available at https://csrc.nist.gov/glossary* (''NIST Glossary''). The proposed definitions also are consistent with proposed definitions in the Investment Management Cybersecurity Proposing Release. *See* Investment Management Cybersecurity Proposing Release at notes 27, 28, and 30. We believe the proposed terms are sufficiently precise for registrants to understand and use in connection with the proposed rules. Use of common terms is intended to facilitate compliance and reduce regulatory burdens. Using common terms and similar definitions with the Investment Management Cybersecurity Proposing Release along with other federal cybersecurity rulemakings is intended to facilitate compliance and reduce regulatory burdens.

[81] *See supra* Section II.B.2, for examples of cybersecurity incidents that may require disclosure pursuant to proposed Item 1.05 of Form 8–K.

[82] NACD, *2019–2020 NACD Public Company Governance Survey, available at https://corpgov.law.harvard.edu/wp-content/uploads/2020/01/2019-2020-Public-Company-Survey.pdf.*

[83] *See id.*

[84] Consistent with proposed Instruction 1 to Item 106(c), we are proposing an instruction to Item 407(j) to clarify that in the case of a FPI with a two-tier board of directors the term ''board of directors'' means the supervisory or non-management board. In the case of a FPI meeting the requirements of 17 CFR 240.10A–3(c)(3), for purposes of 407(j), the term, ''board of directors'' means the registrant's board of auditors (or similar body) or statutory auditors, as applicable. *See* proposed Instruction 2 to Item 407(j). Likewise, proposed General Instruction J to Form 10–K permits an asset-backed issuer that does not have any executive officers or directors to omit the Item 407 disclosure required by Form 10–K as these entities are generally passive pools of assets and are subject to substantially different reporting requirements than operating companies. Similarly, such entities would be permitted to omit the proposed Item 407(j) disclosure from Form 10–K under General Instruction J for the same reason.

S–K (board risk oversight). The proposed Item 407(j) disclosure would be required in a registrant's proxy or information statement when action is to be taken with respect to the election of directors, and in its Form 10–K.

Proposed Item 407(j) would not define what constitutes ''cybersecurity expertise,'' given that such expertise may cover different experiences, skills, and tasks. Proposed Item 407(j)(1)(ii) does, however, include the following non-exclusive list of criteria that a registrant should consider in reaching a determination on whether a director has expertise in cybersecurity:

- Whether the director has prior work experience in cybersecurity, including, for example, prior experience as an information security officer, security policy analyst, security auditor, security architect or engineer, security operations or incident response manager, or business continuity planner;
- Whether the director has obtained a certification or degree in cybersecurity; and
- Whether the director has knowledge, skills, or other background in cybersecurity, including, for example, in the areas of security policy and governance, risk management, security assessment, control evaluation, security architecture and engineering, security operations, incident handling, or business continuity planning.

Proposed Item 407(j)(2) would state that a person who is determined to have expertise in cybersecurity will not be deemed an expert for any purpose, including, without limitation, for purposes of Section 11 of the Securities Act (15 U.S.C. 77k),[85] as a result of being designated or identified as a director with expertise in cybersecurity pursuant to proposed Item 407(j).[86] This proposed safe harbor is intended to clarify that Item 407(j) would not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the board of directors in the absence of such designation or identification.[87] This provision should alleviate such concerns for cybersecurity experts considering board service. Conversely, we do not intend for the identification of a cybersecurity expert on the board to decrease the duties and obligations or liability of other board members.[88]

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26. Would proposed Item 407(j) disclosure provide information that investors would find useful? Should it be modified in any way?

27. Should we require disclosure of the names of persons with cybersecurity expertise on the board of directors, as currently proposed in Item 407(j)(1)? Would a requirement to name such persons have the unintended effect of deterring persons with this expertise from serving on a board of directors?

28. When a registrant does not have a person with cybersecurity expertise on its board of directors, should the registrant be required to state expressly that this is the case under proposed Item 407(j)(1)? As proposed, we would not require a registrant to make such an explicit statement.

29. Proposed Item 407(j) would require registrants to describe fully the nature of a board member's expertise in cybersecurity without mandating specific disclosures. Is there particular information that we should instead require a registrant to disclose with respect to a board member's expertise in cybersecurity?

30. As proposed, Item 407(j)(1) includes a non-exclusive list of criteria that a company should consider in determining whether a director has expertise in cybersecurity. Are these factors for registrants to consider useful in determining cybersecurity expertise? Should the list be revised, eliminated, or supplemented?

31. Would the Item 407(j) disclosure requirements have the unintended effect of undermining a registrant's cybersecurity defense efforts or otherwise impose undue burdens on registrants? If so, how?

32. Should 407(j) disclosure of board expertise be required in an annual report and proxy or information statement, as proposed?

33. To what extent would disclosure under proposed Item 407(j) overlap with disclosure required under Item 401(e) of Regulation S–K with respect to the business experience of directors? Are there alternative approaches that would avoid duplicative disclosure without being cumbersome for investors?

34. As proposed, Item 407(j) does not include a definition of the term ''expertise'' in the context of cybersecurity? Should Item 407(j) define the term ''expertise''? If so, how should we define the term?

35. Should certain categories of registrants, such as smaller reporting companies, emerging growth companies, or FPIs, be excluded from the proposed Item 407(j) disclosure requirement? How would any exclusion affect the ability of investors to assess the cybersecurity risk of a registrant or compare such risk among registrants?

36. Should we adopt the proposed Item 407(j)(2) safe harbor to clarify that a director identified as having expertise in cybersecurity would not have any increased level of liability under the federal securities laws as a result of such identification? Are there alternatives we should consider?

37. As proposed, disclosure under Item 407(j) would be required in a proxy or information statement. Should we require the disclosure under Item 407(j) to appear in a registrant's proxy or information statement regardless of whether the registrant is relying on General Instruction G(3)? Is this information relevant to a security holder's decision to vote for a particular director?

F. Periodic Disclosure by Foreign Private Issuers

We propose to amend Form 20–F to add Item 16J that would require an FPI to include in its annual report on Form 20–F the same type of disclosure that we propose in Items 106 and 407(j) of Regulation S–K and that would be required in periodic reports filed by domestic registrants. One difference is that while domestic registrants would be required to include the proposed Item 407(j) disclosure about board expertise in both their annual reports and proxy or information statements, FPIs are not subject to Commission rules for proxy or information statement filings and thus, would only be required to include this disclosure in their annual reports.[89]

With respect to incident disclosure, where an FPI has previously reported an incident on Form 6–K, the proposed amendments would require an update regarding such incidents, consistent with proposed Item 106(d)(1) of Regulation S–K.[90] We are also proposing to amend Form 20–F to require FPIs to disclose on an annual basis information regarding any previously undisclosed material cybersecurity incidents that have occurred during the reporting period, including a series of previously undisclosed individually immaterial cybersecurity incidents that has become material in the aggregate.[91]

The Commission created Form 40–F in connection with its establishment of a multijurisdictional disclosure system (''MJDS''). This system generally

[85] 15 U.S.C. 77k.

[86] *See* proposed Item 407(j)(3)(i).

[87] *See* proposed Item 407(j)(3)(ii).

[88] *See* proposed Item 407(j)(3)(iii).

[89] Exchange Act Rule 3a12–3(b) [17 CFR 240.3a12–3(b)].

[90] *See* proposed Item 16J(d)(1).

[91] *See* proposed Item 16J(d)(2).

permits eligible Canadian FPIs to use Canadian disclosure standards and documents to satisfy the Commission's registration and disclosure requirements. Accordingly, we are not proposing prescriptive cybersecurity disclosure requirements for Form 40–F filers.

Request for Comment

38. Should we amend Form 20–F, as proposed to require disclosure regarding cybersecurity risk management and strategy, governance, and incidents? Additionally, should we amend Form 6–K, as proposed, to add ''cybersecurity incidents'' as a reporting topic? Are there unique considerations with respect to FPIs in these contexts?

39. We are not proposing any changes to Form 40–F. Should we instead require an MJDS issuer filing an annual report on Form 40–F to comply with the Commission's specific proposed cybersecurity-related disclosure requirements in the same manner as Form 10–K or Form 20–F filers?

G. Structured Data Requirements

We are proposing to require registrants to tag the information specified by Item 1.05 of Form 8–K and Items 106 and 407(j) of Regulation S–K in Inline XBRL in accordance with Rule 405 of Regulation S–T (17 CFR 232.405) and the EDGAR Filer Manual.[92] The proposed requirements would include block text tagging of narrative disclosures, as well as detail tagging of quantitative amounts disclosed within the narrative disclosures. Inline XBRL is both machine-readable and human-readable, which improves the quality and usability of XBRL data for investors.[93]

Requiring Inline XBRL tagging of the disclosures provided pursuant to these disclosure items would benefit investors by making the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. This Inline XBRL tagging would enable automated extraction and analysis of the granular data required by the proposed rules, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison of this information across registrants and time periods. For narrative disclosures, an Inline XBRL requirement would allow investors to extract and search for disclosures about cybersecurity incidents reported on Form 8–K, updated information about cybersecurity incidents reported in a registrant's periodic reports, a registrant's cybersecurity policies and procedures, management's role in assessing and managing cybersecurity risks, and the board of directors' oversight of cybersecurity risk and cybersecurity expertise rather than having to manually run searches for these disclosures through entire documents. The Inline XBRL requirement would also enable automatic comparison of these disclosures against prior periods, and targeted artificial intelligence/machine learning assessments of specific narrative disclosures rather than the entire unstructured document. At the same time, we do not expect the incremental compliance burden associated with tagging the proposed additional information to be unduly burdensome because registrants subject to the proposed tagging requirements are for the most part subject to similar Inline XBRL requirements in other Commission filings.

Request for Comment

40. Should we require registrants to tag the disclosures required by proposed Item 1.05 of Form 8–K and Items 106 and 407(j) of Regulation S–K in Inline XBRL, as proposed? Are there any changes we should make to ensure accurate and consistent tagging? If so, what changes should we make? Should we require registrants to use a different structured data language to tag these disclosures? If so, what structured data language should we require? Are there any registrants, such as smaller reporting companies, emerging growth companies, or FPIs that we should exempt from the tagging requirement?

General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rule amendments, specific issues discussed in this release, and other matters that may have an effect on the proposed rule amendments. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Economic Analysis

A. Introduction

Cybersecurity threats and incidents continue to increase in prevalence and seriousness, posing an ongoing and escalating risk to public companies, investors, and other market participants.[94] The number of reported breaches disclosed by public companies has increased over the last decade, from 28 in 2011 to 144 in 2019 and 117 in 2020.[95] Although estimating the total cost of cybersecurity incidents is difficult, as many events may be unreported, some estimates put the total costs in the trillions of dollars per year in the U.S. alone.[96] The Council of Economic Advisers estimated that in 2016 the total cost of cybersecurity incidents was between $57 billion and $109 billion, or between 0.31 and 0.58 percent of U.S. GDP in that year.[97]

As described earlier, while cybersecurity incident disclosure has become more frequent since the issuance of the 2011 Staff Guidance and 2018 Interpretive Release, there is concern that material cybersecurity incidents are underreported.[98] For instance, the staff has observed that certain cybersecurity incidents were reported in the media but not disclosed in a registrant's filings.[99] Even when

[92] This tagging requirement would be implemented by including a cross-reference to Rule 405 of Regulation S–T in proposed Item 1.05 of Form 8–K and Items 106 and 407(j) of Regulation S–K, and by revising Rule 405(b) of Regulation S–T [17 CFR 232.405(b)] to include the listed disclosure Items. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S–T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in Rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

[93] *See* Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. *Id.* at 40851.

[94] Unless otherwise noted, when we discuss the economic effects of the proposed amendments on ''other market participants,'' we mean those market participants that typically provide services for investors and who rely on the information in registrant's filings (such as financial analysts, investment advisers, and portfolio managers).

[95] Audit Analytics, *Trends in Cybersecurity Breaches* (Mar. 2021) (stating that: ''[c]ybersecurity breaches can result in a litany of costs, such as investigations, legal fees, and remediation. There is also the risk of economic costs that directly impact financial performance, such as a reduction in revenue due to lost sales.'').

[96] *See* Cybersecurity and Infrastructure Security Agency, *Cost of a Cyber Incident: Systemic Review and Cross-Validation* (Oct. 26, 2020), *available at https://www.cisa.gov/sites/default/files/publications/CISA-OCE_Cost_of_Cyber_Incidents_Study-FINAL_508.pdf.*

[97] *See supra* note 12, The Council of Economic Advisers, *The Cost of Malicious Cyber Activity to the U.S. Economy* (Feb. 2018).

[98] *See supra* section II.B and note 46. *See also infra* note 146, Amir et al. (2018) (providing evidence that companies underreport cyber-attacks).

[99] *See supra* section I.B.

disclosures about cybersecurity breaches are made, they may not be timely. According to Audit Analytics data, in 2020, it took on average 44 days for companies to discover breaches, and then in addition, it took an average of 53 days and a median of 37 days for companies to disclose a breach after its discovery.[100] Additionally, incident disclosure practices currently vary widely across registrants—some registrants disclose incidents through Form 8–K and some may disclose on a company website or in a press release. Because cybersecurity incidents can significantly impact companies' stock prices, delayed reporting results in mispricing of registrants' securities, harming investors.[101] Therefore, more timely and informative disclosure of a cybersecurity incident is needed for investors to assess an incident's impact and a registrant's ability to respond to the incident and to make more informed decisions.

Investors also need to better understand the growing cybersecurity risks registrants are facing and their ability to manage such risks in order to better value their securities. Executives, boards of directors, and investors are focused on this emerging risk. A 2019 survey of CEOs, boards of directors, and institutional investors found that they identified cybersecurity as the top global challenge for CEOs.[102] In 2021, a survey of audit committee members identified cybersecurity as the second highest risk that their audit committee would focus on in 2022, second only to financial reporting and internal controls.[103]

Disclosures about cybersecurity risk management, strategy, and governance are increasing, although they are not currently provided by all registrants. An analysis of disclosures by Fortune 100 companies found that disclosures of cybersecurity risk in proxy statements were found in 89 percent of filings in 2020, up from 79 percent in 2018, and disclosures of efforts to mitigate cybersecurity risk were found in 92 percent of proxy statements or 10–K Forms, up from 83 percent in 2018.[104]

As with incident reporting, there is a lack of uniformity in current reporting practice for cybersecurity risk management, strategy, and governance disclosure.[105] The relevant disclosures currently are made in varying sections of a registrant's periodic and current reports, such as in risk factors, in management's discussion and analysis, in a description of business and legal proceedings, or in financial statement disclosures, and are sometimes blended with other unrelated disclosures. The varied disclosure about both cybersecurity incidents and cybersecurity risk management, strategy, and governance makes it difficult for investors and other market participants to understand the cybersecurity risks that companies face and their preparedness for an attack, and to make comparisons across registrants.

To provide investors and other market participants with more timely, informative, and consistent disclosure about cybersecurity incidents, and cybersecurity risk management, strategy, and governance, we are proposing the following amendments.[106] Regarding incident reporting, we propose to: (1) Amend Form 8–K to add Item 1.05 to require registrants to disclose information about a cybersecurity incident within four business days following the registrant's determination that such an incident is material to the registrant; and (2) add new Item 106(d) of Regulation S–K to require registrants to provide updated disclosure in its periodic reports relating to previously disclosed incidents; and (3) amend Form 20–F and Form 6–K to require FPIs to provide cybersecurity disclosures consistent with the disclosure that we propose to require in the domestic forms.

For disclosures regarding cybersecurity risk management, strategy, and governance, we are proposing the following. First, we propose to amend Regulation S–K to require disclosure specified in proposed new Item 106(b) and (c) regarding: (1) A registrant's policies and procedures if any, for identifying and managing cybersecurity risks, (2) a registrant's cybersecurity governance, including the board of directors' oversight role regarding cybersecurity-related issues, and (3) management's role and expertise in assessing and managing cybersecurity risks and implementing related policies, procedures and strategies. Second, we propose to amend Item 407 of Regulation S–K to require disclosure about cybersecurity expertise of any member of the board.

The discussion below addresses the potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.[107] At the outset, we note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In many cases, however, we are unable to quantify the potential economic effects because we lack information necessary to provide a reasonable estimate. Where we are unable to quantify the economic effects of the proposed amendments, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and the potential impacts of the proposed amendments on efficiency, competition, and capital formation.

B. Economic Baseline

1. Current Regulatory Framework

To assess the economic impact of the proposed rules, the Commission is using as its baseline the existing regulatory framework for cybersecurity disclosure. As discussed in Section I, although a number of rules and regulations impose an obligation on companies to disclose cybersecurity risks and incidents in certain circumstances, the Commission's regulations currently do not explicitly address cybersecurity.

In 2011, the Division of Corporation Finance issued interpretive guidance providing the Division's views concerning operating companies' disclosure obligations relating to cybersecurity risks and incidents.[108] The 2011 Staff Guidance provided an overview of existing specific disclosure obligations that may require a discussion of cybersecurity risks and

[100] *See supra* note 95 (''Audit Analytics'').

[101] *See infra* note 133.

[102] *See supra* note 15, *EY CEO Imperative Study* (2019). The Ernst & Young survey consisted of interviewing 200 global CEOs amongst the Forbes Global 2000 and Forbes largest private companies as well as interviewing 100 senior investors from global firms that had managed at least $100 billion in assets.

[103] *See* Center for Audit Quality, *Audit Committee Practices Report: Common Threads Across Audit Committees* (Jan. 2022), *available at https://www.thecaq.org/2022-ac-practices-report/.*

[104] *See* Jamie Smith, *How Cybersecurity Risk Disclosures and Oversight are Evolving in 2021,* EY Center for Board Matters (Oct. 5, 2021), *available at https://www.ey.com/en_us/board-matters/cybersecurity-risk-disclosures-and-oversight.*

[105] *See supra* section I.

[106] *See supra* section II.

[107] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] directs the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

[108] *See supra* section I.A and note 26.

cybersecurity incidents, along with examples of potential disclosures.[109] Building on the 2011 Staff Guidance, the Commission issued the 2018 Interpretive Release to assist operating companies in preparing disclosure about cybersecurity risks and incidents under existing disclosure rules.[110] In the 2018 Interpretive Release, the Commission instructed companies to provide timely and ongoing information in periodic reports (Form 10–Q, Form 10–K, and Form 20–F) about material cybersecurity risks and incidents that trigger disclosure obligations. Additionally, the 2018 Interpretive Release encouraged companies to continue to use current reports (Form 8–K or Form 6–K) to disclose material information promptly, including disclosure pertaining to cybersecurity matters. Further, the 2018 Interpretive Release noted that to the extent cybersecurity risks are material to a company's business, the Commission believes that the required disclosure of the company's risk oversight should include the nature of the board's role in overseeing the management of that cybersecurity risk. The 2018 Interpretive Release also stated that a company's controls and procedures should enable them to, among other things, identify cybersecurity risks and incidents and make timely disclosures regarding such risks and incidents. Finally, the 2018 Interpretive Release highlighted the importance of insider trading prohibitions and the need to refrain from making selective disclosures of cybersecurity risks or incidents.

Companies currently may also be subject to other cybersecurity incident disclosure requirements adopted by various industry regulators and contractual counterparties. For example, federal contractors may be required to monitor and report cybersecurity incidents and breaches or face liability under the False Claims Act.[111] The Health Insurance Portability and Accountability Act (HIPAA) requires covered entities and their business associates to provide notification following a breach of unsecured protected health information.[112] Similar rules require vendors of personal health records and related entities to report data breaches to affected individuals and the Federal Trade Commission.[113] All 50 states have data breach laws that require businesses to notify individuals of security breaches involving their personally identifiable information.[114] There are other rules that companies must follow in international jurisdictions that are similar in scope to the proposed rules. For example, in the European Union, the General Data Protection Regulation mandates disclosure of cybersecurity breaches.[115] All of the aforementioned data breach disclosure requirements may cover some of the material incidents that companies would need to report under the proposed amendments, but not all incidents. Additionally, the timeliness and public reporting requirements of these requirements vary, making it difficult for investors and other market participants to be alerted to the breaches, and to be provided with an adequate understanding of the impact of such incidents to registrants.

Some companies are also subject to other mandates to fulfill a basic level of cybersecurity risk management, strategy, and governance. For instance, government contractors may be subject to the Federal Information Security Modernization Act, and use the National Institute of Standards and Technology framework to manage information and privacy risks.[116] Financial institutions may be subject to the Federal Trade Commission's Standards for Safeguarding Customer Information Rule, requiring an information security program and a qualified individual to oversee the security program and to provide periodic reports to a company's board of directors or equivalent governing body.[117] Under HIPAA regulations, covered entities are also subject to rules that require protection against reasonably anticipated threats to electronic protected health information.[118] International jurisdictions also have cybersecurity risk mitigation measures, for example, the GDPR requires basic cybersecurity risk mitigation measures and has governance requirements.[119] These various requirements have varying standards and requirements for reporting cybersecurity risk management, strategy, and governance, and may not provide investors with clear and comparable disclosure regarding how a particular registrant manages its cybersecurity risk profile.

2. Affected Parties

The proposed new disclosure requirements would apply to various filings, including current reports, periodic reports, and certain proxy statements filed with the Commission. Thus, the parties that are likely to be affected by the proposed rules include investors, registrants, other market participants that use the information in these filings (such as financial analysts, investment advisers, and portfolio managers) and external stakeholders such as consumers and other companies in the same industry as affected firms.

We expect the proposed rules to affect all companies with relevant disclosure obligations on Forms 10–K, 10–Q, 20–F, 8–K, or 6–K, and proxy statements. This includes approximately 7,848 companies filing on domestic forms and 973 FPIs filing on foreign forms based on all companies that filed such forms or an amendment thereto during calendar year 2020.[120]

Our textual analysis [121] of all calendar year 2020 Form 10–K filings and amendments (7,683) reveals that out of 6,634 domestic filers approximately 64% (4,272) of them made any cybersecurity-related disclosures. The filers' average size in terms of total assets and market capitalization was

[109] *Id.*

[110] *See supra* section I.A and note 27.

[111] *See* Department of Justice, Office of Public Affairs, *Justice News: Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative,* (Oct. 6, 2021), *available at https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative; see, e.g.,* FAR 52.239–1 (requiring contractors to ''immediately'' notify the federal government if they become aware of ''new or unanticipated threats or hazards . . . or if existing safeguards have ceased to function'').

[112] *See* 45 CFR 164.400–164.414 (Notification in the Case of Breach of Unsecured Protected Health Information).

[113] *See* 16 CFR 318 (Health Breach Notification Rule).

[114] Note that there are carve outs to these rules, and not every company may fall under any particular rule. *See Security Breach Notification Laws,* National Conference of State Legislatures (Jan. 17, 2022), *available at https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx.*

[115] *See* Regulation (EU) 2016/679, of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), arts. 33 (Notification of a personal data breach to the supervisory authority), 34 (Communication of a personal data breach to the data subject), 2016 O.J. (L 119) 1 (''GDPR'').

[116] *See NIST Risk Management Framework,* NIST (updated Jan. 31, 2022), *available at https://csrc.nist.gov/projects/risk-management/fisma-background.*

[117] *See* 16 CFR 314.

[118] *See* 45 CFR 164 (Security and Privacy).

[119] *See supra* note 115, GDPR, § 32, § 37.

[120] Estimates of affected registrants here are based on the number of unique CIKs with at least one periodic report, current report, proxy filing, or an amendment to one of the three filed in calendar year 2020.

[121] In performing this analysis, staff executed a combination of computer program-based keyword (and combination of key words) searches followed by manual review to classify disclosures by location within the document. This analysis covered 7,683 Forms 10–K and 10–K/A filed in calendar year 2020 by 6,634 registrants as identified by unique CIK.

approximately $14.1 billion and $7.5 billion, respectively.[122] By comparison, the average size of domestic annual report filers that did not make any cyber disclosures was $892.6 million and $2.2 billion in terms of total assets and market capitalization, respectively. However, the average size of all baseline affected filers was approximately $14.1 billion and $5.6 billion in total assets and market capitalization respectively.

The nature of these disclosures is summarized in the table below, which reports the relative frequency of cyber-related disclosures by location within the annual report conditional on a report having at least one discussion of cybersecurity. We note that the average number of reporting locations for registrants making cybersecurity-related disclosures on the annual report is 1.5, and registrants making cybersecurity-related disclosures often only did so in one section of the annual report (64%). However, many annual reports featured cybersecurity discussions in more than one section: 25% had disclosures in 2 sections, 7% in 3 sections, and 1% in 5 or more sections. Because of this, the percentages in Table 1 sum to greater than 100%.

TABLE 1—INCIDENCE OF CYBERSECURITY-RELATED DISCLOSURES BY 10–K LOCATION [a]

Disclosure location	Item description	Percentage
Item 1A	Risk Factors	94.3
Item 1	Description of Business *	20.5
PSLRA	Cautionary Language regarding Forward Looking Statements	16.3
Item 7	Management's Discussion and Analysis *	10.0
Item 10	Directors, Executive Officers and Corporate Governance	3.4
Item 8	Financial Statements and Supplementary Data	2.8
	Exhibits (attached)	0.9
Item 11	Executive Compensation	0.4
Item 15	Exhibits, Financial Statement Schedules	0.4
Item 2	Properties	0.3
Item 3	Legal Proceedings	0.3
Item 9	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure *	0.2
Item 13	Certain Relationships and Related Transactions, and Director Independence	0.2
Item 6	Selected Financial Data	0.2
Item 5	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.	0.1
Item 4	Mine Safety Disclosures	0.1
Item 14	Principal Accountant Fees and Services	0.1
Item 12	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.	0.0

[a] Because of heterogeneity in registrants' labeling of sections, Items other than 1A are grouped only at the numeric level. An asterisk in the table denotes that the identified Item may contain disclosures located in a more specific subsection. Item 1, for instance, includes Item 1B disclosures; Item 7 includes 7A; and Item 9 includes 9A, 9B, and 9C.

As presented in Table 1, approximately 94% (4,029) of Form 10–K or amendment filers that provided any cyber-related disclosures included discussion of cybersecurity as a material risk factor in Item 1A.

We further estimate that, in 2020, approximately 603 domestic companies reported having a director on their board with cybersecurity experience or expertise. This estimate is based on a review of cybersecurity disclosures by registrants that filed either a Form 10–K or an amended Form 10–K in 2020 that included cybersecurity-related language in their Item 10 (Directors and Executive Officers of the Registrant) discussion or provided similar disclosures in a proxy filing instead.[123]

Finally, there were a total of 74,098 Form 8–K filings in 2020, involving 7,021 filers, out of which 40 filings reported material cybersecurity incidents. Similarly, there were a total of 23,373 Form 6–K filings in 2020, involving 979 filers, out of which 27 filings reported material cybersecurity incidents. Filers of annual, quarterly, or current reports (Forms 10–K, 10–Q, 20–F, 8–K, or 6–K) including a cybersecurity discussion in any form included 104 business development companies.

C. Potential Benefits and Costs of the Proposed Amendments

We have considered the potential benefits and costs associated with the proposed amendments. The proposed rules would benefit investors and other market participants by providing more timely and informative disclosures relating to cybersecurity incidents and cybersecurity risk management, strategy, and governance, facilitating investor decision-making and reducing information asymmetry in the market. The proposed amendments also would entail costs. For instance, in addition to the costs of providing the disclosure itself, more detailed disclosure could potentially increase the vulnerability of registrants and the risk of future attacks. A discussion of the anticipated economic costs and benefits of the proposed amendments is set forth in more detail below. We first discuss benefits to investors (and other market participants, such as financial analysts, investment advisers, and portfolio managers) and registrants. We subsequently discuss costs to investors and registrants. We conclude with a discussion of indirect economic effects on registrants and external stakeholders, such as consumers, and companies in the same industry with registrants or those facing similar cybersecurity threats.

We also expect the proposed amendments to affect compliance burdens. The quantitative estimates of changes in those burdens for purposes of the Paperwork Reduction Act of 1995 (''PRA'') are further discussed in Section [IV] below. For purposes of the PRA, we estimate that the proposed amendments would result in an increase of 2,000 and

[122] Market capitalization averages are estimated as of end of calendar year 2020. Total Asset averages are estimated from the value for the most recently completed fiscal year reported by a registrant by year end 2020.

[123] Based on manual review of the total of 15,565 proxy filings filed in 2020 and the 1,600 of them that mentioned cybersecurity.

180 burden hours from the increase in the number Form 8–K and Form 6–K filings respectively.[124] In addition, the estimated increase in the paperwork burden as a result of the proposed amendments for Form 10–Q, Form 10–K, Form 20–F, Schedule 14A, and Schedule 14C would be 3,000 hours, 132,576 hours, 12,028.50 hours, 3,900 hours, and 342 hours respectively.[125]

1. Benefits

Investors would be the main beneficiaries from the enhanced disclosure of both cybersecurity incidents and cybersecurity risk management, strategy, and governance as a result of the proposed amendments. Specifically, investors would benefit because: (1) More informative and timely disclosure would reduce mispricing of securities in the market and facilitate their decision making; and (2) more uniform and comparable disclosures would lower search costs and information processing costs. Other market participants that rely on financial statement information to provide services to investors, such as financial analysts, investment advisers, and portfolio managers, could also benefit. Registrants could benefit, because the enhanced disclosure as a result of the proposed amendments could reduce information asymmetry and potentially lower registrants' cost of capital.

a. Benefits to Investors

(i) More Informative and More Timely Disclosure

More informative and timely disclosures would reduce mispricing of securities in the market and facilitate investor decision making. Information benefits would result from both types of disclosure,[126] and timeliness benefits would result from the proposed cybersecurity incident disclosure.

The proposed amendments would provide more informative disclosures related to cybersecurity incidents and cybersecurity risk management, strategy, and governance compared to the current disclosure framework, benefiting investors. The increase in disclosure would allow investors to better understand a registrant's cybersecurity risks and ability to manage such risks, and thereby make more informed investment decisions. As discussed in Section I, currently, there are no disclosure requirements that explicitly refer to cybersecurity risks or incidents. While existing disclosure requirements may apply to material cybersecurity incidents and various cybersecurity risks and mitigation efforts, as highlighted in the 2011 Staff Guidance and the 2018 Interpretive Release, the existing disclosure requirements are more general in nature, and the resulting disclosures have not been consistently sufficient or necessarily informative.

Specifically, regarding incident reporting, there is concern that material cybersecurity incidents are underreported,[127] and staff has observed that certain cybersecurity incidents were reported in the media but not disclosed in a registrant's filings.[128] Even when registrants have filed Form 8–K to report an incident, the Form 8–K did not necessarily state whether or not the incident was material, and in some cases, the Form 8–K stated that the incident was immaterial.[129] By requiring registrants to disclose material cybersecurity incidents in a current report and disclose any material changes, additions, or updates in a periodic report, the proposed amendments could elicit more incident reporting. Because the proposed incident disclosure requirements also specify that registrants would disclose information such as when the incident was discovered, and the nature and scope of the incident, they could also result in more informative incident reporting.

Similarly, the proposed disclosure about cybersecurity risk management, strategy, and governance would include a number of specific items that registrants must disclose. For instance, the proposed rules would require disclosure regarding a registrant's policies and procedures for identifying and managing cybersecurity risks.[130] The proposed rules would also require disclosure concerning whether and how cybersecurity considerations affect a registrant's selection and oversight of third-party service providers because a significant number of cybersecurity incidents pertain to third party service providers.[131] As a result, the proposed rules related to risk management, strategy, and governance could also lead to more informative disclosure to investors.

We anticipate the proposed cybersecurity incident reporting would also lead to more timely disclosure to investors. As discussed above, currently, it could take months for registrants to disclose a material cybersecurity incident after its discovery.[132] The proposed amendments would require these incidents to be disclosed in a current report on Form 8–K within four business days after the registrant determines that it has experienced a material cybersecurity incident.

More informative and timely disclosure as a result of the proposed amendments would benefit investors because the enhanced disclosure could allow them to better understand the impact of a cybersecurity incident on the registrant, the risk a registrant is facing and its ability to manage the risk. Such information is relevant to the valuation of registrants' securities and thereby investors' decision making. It is well documented in the academic literature that the market reacts negatively to announcements of cybersecurity incidents. For example, one study finds a significant mean cumulative abnormal return of –0.84% in the three days following cyberattack announcements, which, according to the study, translates into an average value loss of $495 million per attack.[133] Another study finds that firms with higher exposure to cybersecurity risk have a higher cost of capital, suggesting

[124] *See infra* section IV.

[125] *Id.*

[126] Throughout this section, we use the term ''both types of disclosure'' to refer to the disclosure of (1) cybersecurity incidents and (2) cybersecurity risk management, strategy, and governance.

[127] *See supra* section II.B and note 46.

[128] *See supra* section I.B.

[129] Based on staff analysis of the current and periodic reports in 2021 for companies identified by as having been affected by a cybersecurity incident.

[130] *See supra* section II.D.

[131] *See supra* section II.D.

[132] *See supra* note 95, section III.A.

[133] *See* Shinichi Kamiya, Jun-Koo Kang, Jungmin Kim, Andreas Milidonis, and René M. Stulz, *Risk Management, Firm Reputation, and the Impact of Successful Cyberattacks on Target Firms,* 139 (3) J. of Fin. Econ. 721, 719–749 (2021). *See also* Lawrence A. Gordon, Martin P. Loeb, and Lei Zhou, *The Impact of Information Security Breaches: Has There Been a Downward Shift in Costs?,* 19 (1) J. of Comput. Sec. 33, 33–56 (2011) (finding ''the impact of the broad class of information security breaches on stock market returns of firms is significant''); *see also* Georgios Spanos and Lefteris Angelis, *The Impact of Information Security Events to the Stock Market: A Systematic Literature Review,* 58 Comput. & Sec. 216–229 (2016) (documenting that the majority (75.6%) of the studies the paper reviewed report statistical significance of the impact of security events to the stock prices of firms). *But see* Katherine Campbell, Lawrence A. Gordon, Martin P. Loeb, and Lei Zhou, *The Economic Cost of Publicly Announced Information Security Breaches: Empirical Evidence From the Stock Market,* 11 (3) J. of Comput. Sec. 432, 431–448 (2003) (while finding limited evidence of an overall negative stock market reaction to public announcements of information security breaches, they also find ''the nature of the breach affects this result'', and ''a highly significant negative market reaction for information security breaches involving unauthorized access to confidential data, but no significant reaction when the breach does not involve confidential information''; they thus conclude that ''stock market participants appear to discriminate across types of breaches when assessing their economic impact on affected firms'').

that this risk is important to investors.[134] Therefore, whether a registrant is prepared for cybersecurity risks and has adequate cybersecurity risk management, strategy, and governance measures in place to reduce the likelihood of future incidents are important information for investors and the market. Delayed or incomplete reporting of cybersecurity incidents and risks could lead to mispricing of the securities and information asymmetry in the market, harming investors.

In addition, the mispricing resulting from delayed or limited disclosure could be exploited by the malicious actors who caused a cybersecurity incident, or those who could access and trade on material information stolen during a cybersecurity incident, causing further harm to investors.[135] Malicious actors may trade ahead of an announcement of a data breach that they caused or pilfer material information to trade on ahead of company announcements. Trading on undisclosed cybersecurity information is particularly pernicious, because profits generated from this type of trading would provide incentives for malicious actors to ''create'' more incidents and proprietary information to trade on.[136] More informative and timely disclosure as a result of the proposed amendments would reduce mispricing and information asymmetry, and thereby reduce opportunities for malicious actors to exploit the mispricing, all of which would enhance investor protection.

Overall, we believe enhanced disclosure as a result of the proposed amendments could benefit investors by allowing them to make more informed decisions. Similarly, other market participants that rely on financial statement information to provide services to investors would also benefit, because more informative and timely disclosure would allow them to better understand a registrant's cybersecurity risks and ability to manage such risks. As a result, they would be able to better evaluate registrants' securities and provide better recommendations.

[134] *See* Chris Florakis, Christodoulos Louca, Roni Michaely, and Michael Weber, *Cybersecurity Risk.* (No. w28196), Nat'l Bureau of Econ. Rsch, (2020).

[135] *See* Joshua Mitts and Eric Talley, *Informed Trading and Cybersecurity Breaches,* 9 Harv. Bus. L. Rev. 1 (2019) (''In many respects, then, the cyberhacker plays a role in creating and imposing a unique harm on the targeted company—one that (in our view) is qualitatively different from ''exogenous'' information shocks serendipitously observed by an information trader. Allowing a coordinated hacker-trader team to capture these arbitrage gains would implicitly subsidize the very harm-creating activity that is being ''discovered'' in the first instance.'').

[136] *Id.*

However, we note that the potential benefit could be reduced to the extent that registrants have already been providing the relevant disclosures.

We are unable to quantify the potential benefit to investors and other market participants as a result of the increase in disclosure and improvement in pricing under the proposed amendments. The estimation requires information about the fundamental value of securities and the extent of the mispricing. We do not have access to such information, and therefore cannot provide a reasonable estimate.

(ii) Greater Uniformity and Comparability

The proposed disclosure about cybersecurity incidents and cybersecurity risk management, strategy, and governance could also lead to more uniform and comparable disclosures, benefiting investors by lowering their search costs and information processing costs. As discussed in Section I, while some registrants currently file Form 8–K to report an incident, their reporting practices vary widely.[137] Some provide a discussion of materiality, the estimated costs of an incident, or the remedial steps taken as a result of an incident, while others do not provide such disclosure or provide much less detail in their disclosure. Disclosures related to risk management, strategy, and governance also vary significantly across registrants—such information could be disclosed in places such as the risk factors section, or in the management's discussion and analysis section of Form 10–K, or not at all. Investors currently may find it costly to compare the disclosures of different companies because they would have to spend time to search and retrieve information from different locations. For both types of disclosures, the proposed amendments would specify the topics to be disclosed and the reporting sections to include such disclosures, and as a result, both the incident disclosure and risk management, strategy, and governance disclosure should be more uniform across registrants, making it easier to compare. By specifying a set of topics that registrants should disclose, the proposed disclosure requirement should provide investors and other market participants with a benchmark of a minimum set of information for registrants to disclose, allowing them to better evaluate and compare registrants' cybersecurity risk and disclosure.

We note that to the extent that the disclosures related to cybersecurity risk management, strategy, and governance become too uniform or ''boilerplate,'' the benefit of comparability may be diminished. However, we also note that given the level of the specificity that would be required, the resulting disclosures are unlikely to become boilerplate.

The proposed requirement to tag the cybersecurity disclosure in Inline XBRL would likely augment the aforementioned informational and comparability benefits by making the proposed disclosures more easily retrievable and usable for aggregation, comparison, filtering, and other analysis. XBRL requirements for public operating company financial statement disclosures have been observed to mitigate information asymmetry by reducing information processing costs, thereby making the disclosures easier to access and analyze.[138]

While these observations are specific to operating company financial statement disclosures and not to disclosures outside the financial statements, such as the proposed cybersecurity disclosures, they suggest that the proposed Inline XBRL requirements could directly or indirectly (*i.e.,* through information intermediaries such as financial media, data aggregators, and academic researchers) provide investors with increased insight into cybersecurity-related information at specific companies and across companies, industries, and time periods.[139] Also,

[137] *See supra* section I.B.

[138] *See, e.g.,* J.Z. Chen, H.A. Hong, J.B. Kim, and J.W. Ryou, *Information processing costs and corporate tax avoidance: Evidence from the SEC's XBRL mandate,* 40 J. of Acct. and Pub. Pol'y. 2 (finding XBRL reporting decreases likelihood of firm tax avoidance because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior''); *see also* P.A. Griffin, H.A., Hong, J–B, Kim, and Jee-Hae Lim, *The SEC's XBRL Mandate and Credit Risk: Evidence on a Link between Credit Default Swap Pricing and XBRL Disclosure,* 2014 American Accounting Association Annual Meeting (2014) (finding XBRL reporting enables better outside monitoring of firms by creditors, leading to a reduction in firm default risk); *see also* E. Blankespoor, *The Impact of Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate,* 57 J. of Acc. Res. 919, 919–967 (2019) (finding ''firms increase their quantitative footnote disclosures upon implementation of XBRL detailed tagging requirements designed to reduce information users' processing costs,'' and ''both regulatory and non-regulatory market participants play a role in monitoring firm disclosures,'' suggesting ''that the processing costs of market participants can be significant enough to impact firms' disclosure decisions'').

[139] *See, e.g.,* N. Trentmann, *Companies Adjust Earnings for Covid–19 Costs, but Are They Still a One-Time Expense?,* The Wall Street J. (2020) (citing an XBRL research software provider as a source for the analysis described in the article); *see also Bloomberg Lists BSE XBRL Data,* XBRL.org (2018); *see also* R. Hoitash, and U. Hoitash,

unlike XBRL financial statements (including footnotes), which consist of tagged quantitative and narrative disclosures, the proposed cybersecurity disclosures would consist largely of tagged narrative disclosures.[140] Tagging narrative disclosures can facilitate analytical benefits such as automatic comparison or redlining of these disclosures against prior periods and the performance of targeted artificial intelligence or machine learning assessments (tonality, sentiment, risk words, etc.) of specific cybersecurity disclosures rather than the entire unstructured document.[141]

b. Benefits to Registrants [142]

The proposed amendments regarding both incident reporting and risk management, strategy, and governance disclosure could potentially lower registrants' cost of capital, especially for those who currently have strong cybersecurity risk management, strategy, and governance measures in place. Economic theory suggests that better disclosure could reduce information asymmetry between management and investors, reducing the cost of capital, and thereby improving firms' liquidity and their access to capital markets.[143] In an asymmetric information environment, investors recognize that registrants may take advantage of their position by issuing securities at a price that is higher than justified by the issuer's fundamental value. As a result, investors demand a discount to compensate for the risk of adverse selection. This discount translates into a higher cost of capital.[144] By providing more disclosure, the firm can reduce the risk of adverse selection faced by investors and the discount they demand, ultimately decreasing the firm's cost of capital.[145] Applying this theory to cybersecurity disclosure, the increased disclosure as a result of the proposed amendments could decrease the cost of capital and increase firm value.

The proposed amendments' effect on cost of capital might vary depending on registrants' current level of cybersecurity risk management, strategy, and governance and whether they are already making disclosures regarding their efforts. To the extent that they have not been making the proposed disclosure, registrants with stronger cybersecurity risk management, strategy, and governance measures could be priced more favorably under the proposed amendments because the proposed disclosure would allow the market to better differentiate them from the registrants with less robust measures. To the extent that some registrants are already making disclosures about their robust cybersecurity risk management, strategy, and governance programs, these registrants would benefit less. However, if registrants that previously had less robust cybersecurity risk management, strategy, and governance disclose improvements in their cybersecurity risk management, strategy, and governance in response to the proposed amendments, their cost of capital could also decrease.

Registrants could also benefit from more uniform regulations regarding the timing of disclosures and the types of cybersecurity incident and risk disclosures as a result of the proposed amendments. Currently, the stigma or reputation loss associated with cybersecurity breaches may result in companies limiting reporting about or delaying reporting of cybersecurity incidents.[146] If all registrants are required to report cybersecurity incidents on Form 8–K within four business days as proposed, this could reduce the reputation costs that any one company might suffer after reporting an attack and also reduce the incentives to underreport.

In addition, by formalizing the disclosure requirements related to cybersecurity incidents and cybersecurity risk management, strategy, and governance and specifying the topics to be discussed, the proposed amendments could reduce compliance costs for those registrants who are currently providing disclosure about these topics. The compliance costs would only be reduced to the extent that those registrants may be over-disclosing information, because there is uncertainty about what is required under the current rules. For instance,

Measuring Accounting Reporting Complexity with XBRL, 93 Account. Rev. 259 (2018).

[140] The proposed cybersecurity disclosure requirements do not expressly require the disclosure of any quantitative values; if a registrant includes any quantitative values that are nested within the required discussion (*e.g.,* disclosing the number of days until containment of a cybersecurity incident), those values would be individually detail tagged, in addition to the block text tagging of the narrative disclosures.

[141] To illustrate, without Inline XBRL, using the search term ''remediation'' to search through the text of all registrants' filings over a certain period of time, so as to analyze the trends in registrants' disclosures related to cybersecurity incident remediation efforts during that period, could return many narrative disclosures outside of the cybersecurity incident discussion (*e.g.,* disclosures related to potential environmental liabilities in the risk factors section). If Inline XBRL is used, however, it would enable a user to search for the term ''remediation'' exclusively within the proposed cybersecurity disclosures, thereby likely reducing the number of irrelevant results.

[142] While registrants are legally distinct entities from investors, benefits and costs to registrants as a result of the proposed amendments would ultimately accrue to their investors.

[143] *See* Douglas W. Diamond and Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. Fin. 1325, 1325–1359 (1991) (finding that revealing public information to reduce information asymmetry can reduce a firm's cost of capital through increased liquidity). *See also* Christian Leuz and Robert E. Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000) (providing empirical evidence that increased disclosure lowers the information asymmetry component of the cost of capital in a sample of German firms); *see also* Christian Leuz and Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* 54 J. Acct. Res. 525 (2016) (providing a comprehensive survey of the literature on the economic effect of disclosure).

[144] *See* Leuz and Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000) (stating: ''A brief sketch of the economic theory is as follows. Information asymmetries create costs by introducing adverse selection into transactions between buyers and sellers of firm shares. In real institutional settings, adverse selection is typically manifest in reduced levels of liquidity for firm shares (*e.g.,* Copeland and Galai [1983], Kyle [1985], and Glosten and Milgrom [1985]). To overcome the reluctance of potential investors to hold firm shares in illiquid markets, firms must issue capital at a discount. Discounting results in fewer proceeds to the firm and hence higher costs of capital. A commitment to increased levels of disclosure reduces the possibility of information asymmetries arising either between the firm and its shareholders or among potential buyers and sellers of firm shares. This, in turn, should reduce the discount at which firm shares are sold, and hence lower the costs of issuing capital (*e.g.,* Diamond and Verrecchia [1991] and Baiman and Verrecchia [1996]).'').

[145] Although disclosure could be beneficial for the firm, several conditions must be met for firms to voluntarily disclose all their private information. *See* Anne Beyer, Daniel A. Cohen, Thomas Z. Lys, and Beverly R. Walther, *The Financial Reporting Environment: Review Of The Recent Literature,* 50 J. Acct. & Econ. 296, 296–343 (2010) (discussing conditions under which firms voluntarily disclose all their private information, and these conditions include ''(1) disclosures are costless; (2) investors know that firms have, in fact, private information; (3) all investors interpret the firms' disclosure in the same way and firms know how investors will interpret that disclosure; (4) managers want to maximize their firms' share prices; (5) firms can credibly disclose their private information; and (6) firms cannot commit ex-ante to a specific disclosure policy.''). Increased reporting could also help determine the effect of investment on firm value. *See* Lawrence A. Gordon, Martin P. Loeb, William Lucyshyn, and Lei Zhou, *The Impact of Information Sharing on Cybersecurity Underinvestment: A Real Options Perspective,* 34 (5) J. Acct. & Pub. Policy 509, 509–519 (2015) (arguing that ''information sharing could reduce the tendency by firms to defer cybersecurity investments.'').

[146] *See supra* note 133, Kamiya, at 720 (Kamiya et al.) (2021), (stating ''we find that successful cyberattacks have potentially economically large reputation costs in that the shareholder wealth loss far exceeds the out-of-pocket costs from the attack''). *See also* Eli Amir, Shai Levi, and Tsafrir Livne, *Do Firms Underreport Information on Cyber-Attacks? Evidence from Capital Markets,* 23 (3) Review of Accounting Studies 1177–1206 (2018) (finding evidence that is consistent with managers withholding information on cyber-attacks, and particularly the information on the more severe attacks).

the staff has observed that some registrants provide Form 8–K filings even when they do not anticipate the incident will have a material adverse impact on their business operations, or financial results.[147]

We are unable to quantify these potential benefits to registrants as a result of the proposed amendments due to lack of data. For example, we are unable to observe the actual cybersecurity risk registrants are facing. Without such information, we cannot provide a reasonable estimate on how registrants' cybersecurity risk and therefore their cost of capital may decrease.

2. Costs

We also recognize that enhanced cybersecurity disclosure could result in costs to registrants, depending on the timing and extent of the disclosure. These costs include potential increases in registrants' vulnerability, information uncertainty, and compliance costs. We discuss these costs below.

First, the proposed disclosure about cybersecurity incidents and cybersecurity risk management, strategy, and governance could potentially increase the vulnerability of registrants. Ever since the issuance of the 2011 Staff Guidance, concerns have been raised that providing detailed disclosures of cybersecurity incidents can create the risk of providing a road map for future attacks.[148] The concern is that malicious actors could use the disclosures to potentially gain insights into a registrant's practices on cybersecurity issues and thus better calibrate future attacks.

The proposed changes to Form 8–K and Form 6–K would require registrants to timely file current reports on these forms to disclose material cybersecurity incidents. The proposed disclosures include, for example, the nature and scope of the disclosed incident and whether the registrant has remediated or is currently remediating the incidents. While we have clarified that we would not expect a registrant to publicly disclose specific, technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident (to the extent that a registrant discloses information that could provide clues to malicious actors regarding a registrant's areas of vulnerability) it may face increased risk. Malicious actors could engage in further attacks based on the information, especially given that registrants would also need to make timely disclosure, which could mean that the underlying security issues might not have been completely resolved, thereby potentially exacerbating the ongoing attack. As a result, the proposed incident disclosure rules could potentially increase the vulnerability of registrants, imposing a cost on them and their investors.

Similar concerns could be raised about the proposed risk management, strategy, and governance disclosure. Specifically, proposed Item 407(j) would require registrants to disclose whether a member of its board of directors has cybersecurity expertise, and proposed new Items 106(b) and (c) would require registrants to provide specified disclosure regarding their cybersecurity policies and procedures and cybersecurity governance by a company's management and board. The required disclosure could provide malicious actors information about which companies lack a board of directors with cybersecurity expertise, and which ones have weak policies and procedures related to cybersecurity risk management, and allow such malicious actors to determine their targets accordingly.

However, academic research so far has not provided evidence that more detailed cybersecurity risk disclosures would necessarily lead to more attacks.[149] For example, one study finds that measures for specificity (*e.g.,* the uniqueness of the disclosure) do not have a statistically significant relation with subsequent cybersecurity incidents.[150] Another study finds that the disclosed security risk factors with risk-mitigation themes are less likely to be related to future breach announcements.[151] On the other hand, we note that the proposed amendments would require more details than under the current rules, and the uniformity of the proposed requirements might also make it easier for malicious actors to identify firms with deficiencies. Therefore, these findings might not be generalizable to the effects of the proposed amendments. Additionally, the costs resulting from this potential vulnerability might be partially mitigated to the extent that registrants may decide to enhance their cybersecurity risk management in anticipation of the increased disclosure.

Second, the proposed cybersecurity incident disclosure could potentially increase information uncertainty related to securities, because the disclosure about the impact of the incident on the registrant's operations may lack the precision needed for investors and the market to properly value these securities. While the proposed changes to Form 8–K could improve the timeliness of cybersecurity incident reporting and result in more disclosure about the impact of the incident on the registrant's operations, the proposed rules do not require registrants to quantify the impact of the incident. As a result, registrants' disclosure about the impact of a cybersecurity incident could be qualitative in nature or lack the precision needed for investors and the market to properly value the securities, potentially leading to information uncertainty, investor under or overreaction to certain disclosures, and thereby mispricing of registrants' securities.[152]

Additionally, while the proposed disclosure could have the overall effect of reducing registrants' cost of capital as discussed in Section III.C.1.b, we also recognize that a subset of registrants might experience an increase in costs of capital. More specifically, under the

[147] *See supra* note 129 and accompanying text.

[148] *See, e.g.,* Roland L. Trope and Sarah Jane Hughes, *The SEC Staff's Cybersecurity Disclosure Guidance: Will It Help Investors or Cyber-Thieves More,* 2011 Bus. L. Today 2, 1–4 (2011).

[149] We note that the papers we cited below study the effect of voluntary disclosure and 2011 Staff Guidance. The results from these studies might not be generalizable to the mandatory disclosures under the proposed rules.

[150] *See* He Li, Won Gyun No, and Tawei Wang, *SEC's Cybersecurity Disclosure Guidance and Disclosed Cybersecurity Risk Factors,* 30 Int'l. J. of Acct. Info. Sys. 40–55 (2018) (stating: ''while Ferraro (2013) criticizes that the SEC did little to resolve the concern about publicly revealing too much information [that] could provide potential hackers with a roadmap for successful attacks, we find no evidence supporting such claim'').

[151] *See* Tawei Wang, Karthik N. Kannan, and Jackie Rees Ulmer, *The Association Between the Disclosure and the Realization of Information Security Risk Factors,* 24.2 Info. Sys. Rsch. 201, 201–218 (2013).

[152] *See* Daniel Kent, David Hirshleifer, and Avanidhar Subrahmanyam, *Investor Psychology and Security Market under-and Overreactions,* J. of Fin. 1839–1885 (1998) (showing that investor behavioral biases such as overconfidence can cause them to under- or over-react to information); *see* Nicholas Barberis, Andrei Shleifer, and Robert Vishny, *A Model of Investor Sentiment,* 49 (3) J. of Fin. Econ. 307–343 (1998) (presenting a model of investor sentiment to explain the empirical findings of underreaction of stock prices to news such as earnings announcements, and overreaction of stock prices to a series of good or bad news based on two psychological phenomena, conservatism and representativeness heuristic); *see also* David Hirshleifer, *Investor Psychology and Asset Pricing,* 56 J. of Fin. 1533, 1533–1596 (2001) (stating: ''[m]ore generally, greater uncertainty about a set of stocks, and a lack of accurate feedback about their fundamentals, leaves more room for psychological biases. At the extreme, it is relatively hard to misperceive an asset that is nearly risk-free. Thus, the misvaluation effects of almost any mistaken-beliefs model should be strongest among firms about which there is high uncertainty/poor information (cash flow variance is one possible proxy).'').

proposed amendments, registrants with less robust cybersecurity risk management measures might be priced more unfavorably compared to those with stronger measures, potentially leading to an increase in cost of capital for these registrants. This is because the increased transparency as a result of the proposed disclosure could allow investors to better differentiate registrants' preparedness and ability to manage cybersecurity risks. However, except for this scenario, we expect that registrants overall would benefit from reduced cost of capital as a result of the proposed disclosure as discussed in Section III.C.1.b.

Finally, the proposed rules would impose compliance costs for registrants. Registrants would incur one-time and ongoing costs to fulfill the proposed new disclosure requirements under Items 106 and 407 of Regulation S–K. These costs would include costs to gather the information and prepare the disclosures.

Registrants would also incur compliance costs to fulfill the proposed disclosure requirements related to Form 8–K (Form 6–K for FPIs) incident reporting and Form 10–Q/10–K (Form 20–F for FPIs) ongoing reporting.[153] These costs include one-time costs to implement or revise their incident disclosure practices, so that any registrant that determines it has experienced a material cybersecurity incident would disclose such incident with the required information within four business days. Registrants would also incur ongoing costs to disclose in a periodic report any material changes, additions, or updates relating to previously disclosed incidents, and to monitor whether any previously undisclosed immaterial cybersecurity incidents have become material in the aggregate, triggering a disclosure obligation. The costs would be mitigated for registrants whose current disclosure practices match or are similar to those that are proposed. To the extent that registrants fall under other incident reporting requirements or cybersecurity risk management, strategy, and governance mandates as outlined in Section III.B.1, their costs from the proposed amendments would be mitigated as well.

We note that BDCs could be subject to both the proposed rules and rule amendments in the Investment Management Cybersecurity Proposing Release [154] and those proposed in this release if both proposals were to be adopted. To the extent that BDCs would need to provide substantively the same or similar disclosure on both Form 8–K and in registration statements, the compliance costs could be duplicative. However, the potential duplication should not result in a significant increase in compliance costs, because BDCs should be able to provide similar disclosure for both sets of rules.[155]

The compliance costs would also include costs attributable to the Inline XBRL tagging requirements. Various preparation solutions have been developed and used by operating companies to fulfill XBRL requirements, and some evidence suggests that, for smaller companies, XBRL compliance costs have decreased over time.[156] The incremental compliance costs associated with Inline XBRL tagging of cybersecurity disclosures would also be mitigated by the fact that most registrants who would be subject to the proposed requirements are already subject to other Inline XBRL requirements for other disclosures in Commission filings, including financial statement and cover page disclosures in certain periodic reports and registration statements.[157] Such registrants may be able to leverage existing Inline XBRL preparation processes and expertise in complying with the proposed cybersecurity disclosure tagging requirements. Asset-backed securities issuers, however, are not subject to Inline XBRL requirements in Commission filings and would likely incur initial Inline XBRL compliance implementation costs (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors).[158]

Other than the Paperwork Reduction Act costs discussed in Section IV below, we are unable to quantify the potential increase in costs related to the proposed rules due to the lack of data. For example, we lack data to estimate how registrants' cybersecurity vulnerability would change under the proposal, because such change would depend on their current level of vulnerability. We are also unable to estimate the potential increase in mispricing as a result of the information uncertainty, because the level of the uncertainty would depend on registrants' disclosure.

3. Indirect Economic Effects

Besides the direct economic effects on investors, registrants and other market participants we discussed above, we recognize that the proposed amendments could also indirectly affect registrants and external stakeholders, such as consumers, companies in the same industry with registrants or those facing similar cybersecurity threats.

While the proposal would only require disclosures—not changes to registrants' board composition or risk management practices—the disclosures themselves could result in certain indirect benefits. Registrants might respond to the proposed disclosures by devoting more resources to cybersecurity governance and risk management. To the extent that registrants may decide to enhance their cybersecurity risk management in anticipation of the increased disclosure, it could reduce registrants' susceptibility to a cybersecurity-attack and thereby the likelihood of future incidents, indirectly benefiting registrants.

Registrants may also decide to incur certain indirect costs as a result of the proposed amendments. For example, the proposed rules would require disclosure of whether members of the board or management staff have expertise in cybersecurity.

[153] We note that the compliance costs related to Form 6–K filings would be mitigated, because a condition of the form is that the information is disclosed or required to be disclosed elsewhere.

[154] *See* Investment Management Cybersecurity Proposing Release.

[155] *See infra* section VI.E.

[156] An AICPA survey of 1,032 reporting companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* Michael Cohn, *AICPA Sees 45% Drop in XBRL Costs for Small Companies,* Accounting Today (Aug. 15, 2018) (stating that a 2018 NASDAQ survey of 151 listed registrants found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum, XBRL compliance cost of $350,000 per quarter in XBRL costs per quarter), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies* (retrieved from Factiva database); Letter from Nasdaq, Inc. (March 21, 2019) (to the Request for Comment on Earnings Releases and Quarterly Reports); *see* Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)].

[157] *See* 17 CFR 229.601(b)(101) and 17 CFR 232.405 (for requirements related to tagging financial statements, including footnotes and schedules in Inline XBRL). *See* 17 CFR 229.601(b)(104) and 17 CFR 232.406 (for requirements related to tagging cover page disclosures in Inline XBRL).

[158] *See infra* section IV.

Although not required, some registrants may respond by adding a board member or staff to their management team with cybersecurity expertise. Similarly, the proposed rules would require disclosure on policies and procedures to identify and manage cybersecurity risks. While not required under the proposed rules, it is possible that registrants would respond by allocating more resources to devise, implement, or improve their policies and procedures related to cybersecurity to the extent they currently do not have similar policies and procedures in place. Similarly, indirect costs could result if a registrant were to decide to hire a chief information security officer or other individuals with cybersecurity expertise to their management team. Further, if many registrants move to add a board member or staff to their management team with cybersecurity expertise, or a chief information security officer at the same time, the costs to registrants associated with adding such individuals may increase if demand for cybersecurity expertise increases. This is especially true to the extent that certain relevant certifications or degrees are seen as important designations of cybersecurity expertise and there are a limited pool of individuals holding such certifications.

In addition, the proposed requirement to tag the cybersecurity disclosure in Inline XBRL could have indirect effects on registrants. As discussed in section III.C.1.a.(ii), XBRL requirements for public operating company financial statement disclosures could reduce information processing cost. This reduction in information processing cost has been observed to facilitate the monitoring of companies by other market participants, and, as a result, to influence companies' behavior, including their disclosure choices.[159]

The proposed amendments to require registrants to timely disclose material cybersecurity incidents could indirectly benefit external stakeholders such as other companies in the same industry, those facing similar cybersecurity threats or consumers. Cybersecurity incidents could result in costs not only to the company that suffers the incident, but also to other businesses and consumers. For example, a cybersecurity breach at one company may cause a major disruption or shut down of a critical infrastructure industry, such as a gas pipeline, a bank, or power company, resulting in massive losses throughout the economy.[160] Timely disclosure of cybersecurity incidents as proposed could increase awareness by those external stakeholders that the malicious activities are occurring. More specifically, for companies in the same industry as registrants or for those facing similar cybersecurity threats, the proposed disclosure could alert them to a potential threat and allow them to better prepare for a specific potential cybersecurity attack. To the extent that the proposed amendments increase available disclosure, consumers may benefit from learning the extent of a particular cybersecurity breach, and therefore take appropriate actions to limit potential economic costs that they may incur from the breach. For example, there is evidence that increased disclosure of cybersecurity incidents by registrants can reduce the risk of identity theft for individuals.[161] Also, consumers may be able to make better informed decisions about which companies to trust with their personal information.

In addition, the proposed amendments regarding cybersecurity risk management, strategy, and governance disclosure could indirectly benefit external stakeholders through potentially reduced likelihood of future incidents and negative externalities associated with the incidents. As discussed above, to the extent that registrants may decide to enhance their cybersecurity risk management in anticipation of the increased disclosure, it could reduce registrants' susceptibility to a cybersecurity-attack and thereby the likelihood of future incidents, leading to positive spillover effects.

We are unable to quantify the indirect effects as a result of the proposed amendments because we lack data or basis to estimate the potential changes in disclosure of cybersecurity incidents, risk management, strategy, and governance disclosure and the reduction in negative spill-over effects.

D. Anticipated Effects on Efficiency, Competition, and Capital Formation

Overall, we believe the proposed rules could have positive effects on market efficiency. As discussed above, the proposed rules could improve the timeliness and informativeness of cybersecurity risk disclosure. Investors and other market participants could better understand the cybersecurity threats registrants are facing, their potential impact, and registrants' ability to respond to and manage risks under the proposed rules, and thereby better evaluate registrants' securities and make more informed decisions. As a result, the proposed disclosures could reduce information asymmetry and mispricing in the market, improving liquidity and market efficiency. However, we also recognize that, because registrants' disclosure about the impact of a cybersecurity incident could be qualitative in nature and lack the precision needed for investors and the market to properly value the securities, the proposed incident disclosure might lead to information uncertainty and investor overreaction. We believe such effect should be reduced by more informative reporting from other aspects of the proposed disclosure and subsequent updates in periodic reports.

A more efficient market as a result of the proposed rules could promote competition among firms. Because the enhanced incident reporting and cybersecurity risk management, strategy, and governance disclosure could allow investors to better evaluate the relative cybersecurity risks for different registrants, firms that disclose robust cybersecurity risk management, strategy, and governance could benefit from a competitive advantage relative to firms that do not. This could have a secondary effect of further incentivizing firms that to-date have invested less in cybersecurity preparation to invest more, to the benefit of investors, in order to become more competitive.

[159] *See supra* note 138.

[160] *See* Lawrence A. Gordon, Martin P. Loeb, William Lucyshyn, and Lei Zhou, *Externalities and the Magnitude of Cyber Security Underinvestment by Private Sector Firms: A Modification of the Gordon-Loeb Model,* 6 (1) J. of Info. Sec. 24, 24–30 (2014) (stating: ''[f]irms in the private sector of many countries own a large share of critical infrastructure assets. Hence, cybersecurity breaches in private sector firms could cause a major disruption of a critical infrastructure industry (*e.g.,* delivery of electricity), resulting in massive losses throughout the economy, putting the defense of the nation at risk.''). We note that this study focused on private firms; however, same statement could be made about public companies that own a large share of critical infrastructure assets. *See also U.S. Pipeline Cyberattack Forces Closure,* Wall St J., *available at https://www.wsj.com/articles/cyberattack-forces-closure-of-largest-u-s-refined-fuel-pipeline-11620479737.*

[161] *See* Sasha Romanosky, Rahul Telang, and Alessandro Acquisti, *Do Data Breach Disclosure Laws Reduce Identity Theft*?, 30 (2) J. of Pol'y. Analysis and Mgmt. 272, 256–286 (2011) (finding that the adoption of state-level data breach disclosure laws reduced identity theft by 6.1 percent).

More efficient prices and more liquid markets could help allocate capital to its most efficient uses. Enhanced disclosure of cybersecurity incidents and cybersecurity risk management, strategy, and governance could allow investors to make more informed investment decisions. As a result, companies that disclose more robust cybersecurity risk management, strategy, and governance and thus may be less susceptible to cybersecurity incidents may receive more capital allocation. By making information related to material incident available to the public sooner, and reducing the information asymmetry, the proposed amendments could increase public trust in markets, thereby aiding in capital formation.

D. Reasonable Alternatives

1. Website Disclosure

As an alternative to Form 8–K disclosure of material cybersecurity incidents, we considered providing companies with the option of disclosing this information through company websites, instead of through filing a Form 8–K, when the company has disclosed its intention to do so in its most recent annual report and subject to information availability and retention requirements. While this approach may be less costly for the registrant as it may involve fewer compliance costs and less legal liability compared to a filing of a Form 8–K, the website disclosure would not be located in the same place as other companies' disclosures of material cybersecurity incidents. Also, disclosures made on company websites would not be organized into the standardized sections found in Form 8–K and could thus be less uniform.

The lack of a central repository, such as the EDGAR system,[162] and a lack of uniformity of website disclosures could increase the costs for investors and other market participants to search for and process the information to compare cybersecurity risks across registrants. Additionally, such disclosure might not be preserved on the company's website for as long as it would be when the disclosure is filed with the Commission, because companies may not keep historical information available on their websites indefinitely. They also may go out of business, and thus, there could be information loss to investors when disclosures are deleted from websites. Therefore, this approach would be less beneficial to investors, other market participants, and the overall efficiency of the market.

2. Disclosure Through Form 10–Q and Form 10–K

We also considered requiring disclosure of material cybersecurity incidents through Form 10–Q or Form 10–K instead of Form 8–K. Reporting material cybersecurity incidents at the end of the quarter or year would allow registrants more time to assess the financial impact of such incidents. The resulting disclosure might be more specific or informative for investors and other market participants to value the securities and make more informed decisions. The compliance costs would be less under this alternative, because registrants would not have an obligation to file Form 8–K. With lower compliance costs under this alternative, registrants could use the resources that would go towards disclosure on Form 8–K to instead fill gaps in their cybersecurity defenses exposed by the attack, potentially making it less likely that malicious actors would be able to exploit such vulnerabilities.

However, it would lead to less timely reporting on material cybersecurity incidents. As a result, the market would not be able to incorporate the information related to cybersecurity risk into the security prices in as timely a manner, and investors and other market participants would not be able to make as informed decisions as they could under the proposed approach.

3. Exempt Smaller Reporting Companies

We also considered exempting smaller reporting companies from proposed Item 106 and Item 407, because smaller companies might incur a cost that is disproportionally high, compared to larger companies under the proposed rules. As discussed above, proposed disclosure might expose registrants' cybersecurity weakness and increase their vulnerability. To avoid the potential exposure, smaller companies might increase spending related to cybersecurity risk management measures, which could be disproportionately costly. Also, to the extent that they do not have similar disclosure practices in place currently, it might be relatively more costly for smaller companies to implement the proposed disclosure requirements than larger companies, because they may have fewer resources.

However, evidence suggests that smaller companies may have an equal or greater risk than larger companies of being attacked, making the proposed disclosures particularly important for their investors.[163] The financial impact from an attack could also be more detrimental for smaller companies than for larger ones. To the extent that one indirect effect of the proposed disclosure may be that companies take additional steps to address potential vulnerabilities or enhance their cybersecurity risk management, strategy, and governance, any resulting reduction in vulnerability may be particularly beneficial for smaller companies and their investors.

4. Modify Scope of Inline XBRL Requirement

We also considered changing the scope of the proposed tagging requirements, such as by excluding certain subsets of registrants. For example, the proposed tagging requirements could have excluded asset-backed securities issuers, which are not currently required to tag any filings in Inline XBRL.[164] Under such an alternative, asset-backed securities issuers would submit their cybersecurity disclosures in unstructured HTML or ASCII, and thereby avoid the initial Inline XBRL implementation costs (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors) and ongoing Inline XBRL compliance burdens that would result from the proposed tagging requirement.[165] However, narrowing the scope of the proposed tagging requirements, whether based on registrant type, size, or other criteria, would diminish the extent of any informational benefits that would accrue as a result of the proposed disclosure requirements by making the excluded registrants' cybersecurity disclosures comparatively costlier to process and analyze.

[162] EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, is the primary system for companies and others submitting documents under the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, and the Investment Company Act. EDGAR's public database can be used to research a public company's financial information and operations.

[163] *See supra* note 18.

[164] *See supra* note 157.

[165] *See infra* section IV. The Commission's EDGAR electronic filing system generally requires filers to use ASCII or HTML for their document submissions, subject to certain exceptions. *See* EDGAR Filer Manual (Volume II) version 60 (December 2021), at 5–1; 17 CFR 232.301 (incorporating EDGAR Filer Manual into Regulation S–T). *See also* 17 CFR 232.101 (setting forth the obligation to file electronically on EDGAR). To the extent asset-backed securities issuers are affiliated with registrants that are subject to Inline XBRL requirements, they may be able to leverage those registrants' existing Inline XBRL tagging experience and software, which would mitigate the initial Inline XBRL implementation costs that asset-backed securities issuers would incur under the proposal.

Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed rules and alternatives thereto, and whether the proposed rules, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. In addition, we also seek comment on alternative approaches to the proposed rules and the associated costs and benefits of these approaches. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. Specifically, we seek comment with respect to the following questions:

41. What are the economic effects of the proposed cybersecurity incident and cybersecurity risk management, strategy, and governance disclosures? Would those disclosures provide informational benefits to investors? Would registrants benefit from a potential decrease in cost of capital because of the enhanced disclosure? Are there any other benefits, costs, and indirect effects of the proposed disclosure that we should also consider?

42. Would the proposed cybersecurity incident disclosure provide enough information for investors to assess the impact of a cybersecurity incident in making an investment decision? Because the proposed incident disclosure would not require quantification of an incident's impact, would the lack of quantification create any uncertainty for investors which may cause them to under or overreact to the disclosure? Would investors benefit more if registrants were to provide the disclosure after the incident's impact is quantified or can be reasonably estimated? If so, what metrics should be disclose to help investors understand the impact?

43. Would both types of the proposed disclosure, cybersecurity incident disclosure and cybersecurity risk management, strategy, and governance disclosure, increase the vulnerability of registrants to cybersecurity incidents? Would this effect be mitigated by any of the other effects of the proposal, including indirect effects such as registrants' potential strengthening of cybersecurity risk management measures? What would be the impact of the proposed disclosure on the likelihood of future incidents for registrants? Would that impact be the same for both types of disclosure?

44. Would the proposed incident disclosure increase registrants' compliance costs to fulfill the proposed disclosure requirements related to incident reporting? What would be the magnitude of those costs? Would the proposed cybersecurity risk management, strategy, and governance disclosure lead to indirect costs such as hiring a board member or staff to their management team with cybersecurity expertise, or costs to devise, implement or improve the processes and procedures related to cybersecurity?

45. Would both types of the proposed disclosure lead to indirect economic effects for external stakeholders? Would the magnitude of the indirect effects be greater or less than we have discussed? Are there any other indirect effects that we should consider?

46. Are there any specific data points that would be valuable for assessing the economic effects of the proposed cybersecurity incident and risk management, strategy, and governance that we should consider in the baseline analysis or the analysis of the economic effects? If so, please provide that data.

47. Would any of the economic effects discussed above be more or less significant than in our assessment? Are any of the costs or benefits identified incorrectly for any of the proposed amendments? Are there any other economic effects associated with these proposed rules that we should consider? Are you aware of any data or methodology that can help quantify the benefits or costs of the proposed amendments?

48. Would any of the proposed amendments positively affect efficiency, competition and capital formation as we have discussed? Are there any other effects on efficiency, competition, and capital formation that we should consider?

49. Would any of the proposed amendments have disproportionate costs for smaller reporting companies? Do smaller reporting companies face a different set of cybersecurity risks than other companies?

50. Are there any other alternative approaches to improve disclosure of material cybersecurity incidents, cybersecurity risk management, strategy, or governance that we should consider? If so, what are they and what would be the associated costs or benefits of these alternative approaches?

51. Are there any other costs and benefits associated with alternative approaches that are not identified or are misidentified in the above analysis? Should we consider any of the alternative approaches outlined above instead of the proposed rules? Which approach and why?

IV. Paperwork Reduction Act

A. Summary of the Collection of Information

Certain provisions of our rules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[166] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[167] The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- ''Schedule 14C'' (OMB Control No. 3235–0057);
- ''Schedule 14A'' (OMB Control No. 3235–0059);
- ''Form 8–K'' (OMB Control No. 3235–0060);
- ''Form 10–K'' (OMB Control No. 3235–0063);
- ''Form 10–Q'' (OMB Control No. 3235–0070);
- ''Form 6–K'' (OMB Control No. 3235–0116); and
- ''Form 20–F'' (OMB Control No. 3235–0288).

We adopted the existing forms, pursuant to the Exchange Act. The forms set forth the disclosure requirements for periodic and current reports as well as proxy and information statements filed by issuers to help investors make informed investment and voting decisions. A description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the proposed amendments can be found in Section III above.

[166] *See* 44 U.S.C. 3501 *et seq.*

[167] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

B. Summary of the Estimated Burdens of the Proposed Amendments on the Collections of Information

Estimated Paperwork Burdens of the Proposed Amendments

The following table summarizes the estimated paperwork burdens associated with the proposed amendments to the affected forms.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN ASSOCIATED WITH THE PROPOSED NEW RULES AND AMENDMENTS *

Proposed requirements and effects	Affected forms and schedules	Estimated burden per response	Number of estimated affected responses
Form 8–K, Item 1.05:			
• Require disclosure regarding cybersecurity incidents.	Form 8–K	10 Hours	200 Filings.
Form 6–K:			
• Require disclosure regarding cybersecurity incidents.	Form 6–K	9 Hours	20 Filings.
Adding Item 106 Disclosures:			
• Require disclosure regarding policies and procedures. (Item 106(b)).	• Form 10–K	• Form 10–K: 15 Hours **	• Form 10–K: 8,292 Filings.
• Require disclosure regarding board and management oversight of cybersecurity risk. (Item 106(c)).	• Form 20–F	• Form 20–F: 16.5 Hours.	• Form 20–F: 729 Filings.
• Require updated disclosure regarding cybersecurity incidents (Item 106(d)).	• Form 10–Q (Item 106(d)).	• Form 10–Q: 5 Hours.	• Form 10–Q: 600 Filings.
Adding Item 407(j) disclosures:			
• Require disclosure on the cybersecurity expertise of members of the board of directors of the registrant, if any.	• Form 10–K • Schedule 14A • Schedule 14C.	• Form 10–K: 1.5 Hours • Schedule: 14A: 1.5 Hours. • Schedule 14C: 1.5 Hours ±.	• Form 10–K: Filings: 5,464 Filings. • Schedule 14A: 2,600 Filings. • Schedule 14C: 228 Filings.

* All of these burden estimates incorporate the proposed tagging requirements Rule 405 of Regulation S–T.
** We estimate that 600 of these filings will be increased by five hours due to the proposed Item 106(d) disclosure.
± The burden estimate for Form 10–K assumes that Schedules 14A and 14C would be the primary disclosure documents for the information provided in response to proposed Item 407(j) of Regulation S–K in connection with proxy and information statements involving the election of directors. In this case, we assume that the disclosure would be incorporated by reference in Form 10–K from the proxy or information statement.

Not every filing on the affected current forms, Form 6–K and Form 8–K, would include cybersecurity disclosures. These disclosures would be required only when a registrant has made the determination that it has experienced a material cybersecurity incident. Further, in the case of Form 6–K, the registrant would only have to provide the disclosure if it is required to disclose such information elsewhere.

The table below sets forth our estimates of the number of current filings on the forms which will be affected by the proposed rules. We used this data to extrapolate the effect of these changes on the paperwork burden for the listed periodic reports.[168]

PRA TABLE 3—ESTIMATED NUMBER OF AFFECTED FILINGS

Form	Current annual responses in PRA inventory	Estimated number of filings that would include cybersecurity disclosure
Schedule 14A	6,369	2,600
Schedule 14C	569	228
10–K	8,292	8,292
10–Q	22,925	600
20–F	729	729
8–K	118,387	200
6–K	34,794	20

C. Incremental and Aggregate Burden and Cost Estimates

Below we estimate the incremental and aggregate changes in paperwork burden as a result of the proposed amendments. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors, including the nature of their business.

We calculated the additional burden estimates by multiplying the estimated additional burden per form by the estimated number of responses per form. That additional burden is then added to the existing burden per form. For purposes of the PRA, the burden is

[168] The OMB PRA filing inventories represent a three-year average. Averages may not align with the actual number of filings in any given year.

to be allocated between internal burden hours and outside professional costs. PRA Table 4 below sets forth the percentage estimates we typically use for the burden allocation for each collection of information and the estimated burden allocation for the proposed new collection of information. We also estimate that the average cost of retaining outside professionals is $400 per hour.[169]

PRA TABLE 4—ESTIMATED BURDEN ALLOCATION FOR THE AFFECTED COLLECTIONS OF INFORMATION

Collection of information	Internal (percent)	Outside professionals (percent)
Schedule 14A, Schedule 14C, Form 10–Q, Form 10–K, Form 6–K, and Form 8–K	75	25
Form 20–F	25	75

PRA Table 5 below illustrates the incremental change to the total annual compliance burden of affected forms, in hours and in costs, as a result of the proposed amendments' estimated effect on the paperwork burden per response.

PRA TABLE 5—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Collection of information	Number of estimated affected responses (A) [a]	Burden hour increase per response (B)	Change in burden hours (C) = (A) × (B)	Change in company hours (D) = (C) × 0.75 or .25	Change in professional hours (E) = (C) × 0.25 or .75	Change in professional costs (F) = (E) × $400
Schedule 14A	2,600	1.5	3,900	2,925	975	$390,000
Schedule 14C	228	1.5	342	256.50	85.50	34,200
10–K	8,292	15	124,380	93,285	31,095	12,438,000
10–K	5,464	1.5	8,196	6,147	2,049	819,600
10–Q	600	5	3,000	2,250	750	300,000
20–F	729	16.5	12,028.50	3,007.125	9,021.375	3,608,550
8–K	200	10	2,000	1,500	500	200,000
6–K	20	9	180	135	45	18,000

The following tables summarize the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments.

PRA TABLE 6—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS *

Form	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Change in company hours (E)	Change in professional costs (F)	Annual responses (G) = (A)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
Schedule 14A	6,369	777,590	$103,678,712	2,600	2,925	$390,000	6,369	780,515	$104,068,712
Schedule 14C	569	56,356	7,514,944	228	256.50	34,200	569	56,613	7,529,144
Form 10–K	8,292	14,188,040	1,893,793,119	8,292 (Item 106). 5,464 (407(j))	99,432 93,285 (Item 106) 6,147 (407(j))	13,257,600 (12,438,000 + 819,600)	8,292	14,287,432	1,907,050,719
Form 10–Q	22,925	3,182,333	421,490,754	600	2,250	300,000	22,925	3,184,583	421,790,754
Form 20–F	729	479,261	576,824,025	729	3,007.125	3,608,550	729	482,268	580,432,575
Form 8–K	118,387	818,158	108,674,430	200	1,500	200,000	118,387	819,658	108,847,430
Form 6–K	34,794	227,031	30,270,780	20	135	18,000	34,794	227,166	30,288,780

* For purposes of the PRA, the requested change in burden hours (column H) is rounded to the nearest whole number.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate whether the Commission's estimates of the burden of the proposed collection of information are accurate;
- Determine whether there are ways to enhance the quality, utility, and

[169] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several issuers, law firms, and other persons who regularly assist issuers in preparing and filing reports with the Commission.

clarity of the information to be collected;

• Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7–09–22 Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7–09–22 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed amendments. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[170] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

• An annual effect on the U.S. economy of $100 million or more (either in the form of an increase or a decrease);

• A major increase in costs or prices for consumers or individuals industries; or

• Significant adverse effects on competition, investment, or innovation.

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Act Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (''RFA'') [171] requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IRFA'') that will describe the impact of the proposed rule on small entities.[172] This IRFA relates to proposed amendments and/or additions to the rules and forms described in Section II above.

A. Reasons for, and Objectives of, the Proposed Action

The proposed amendments are intended to provide enhanced disclosures regarding registrants' cybersecurity risk governance and cybersecurity incident reporting. They are designed to better inform investors about material cybersecurity risks and incidents on a timely basis and a registrant's assessment, governance, and management of those risks. The proposed amendments are discussed in more detail in Section II above. We discuss the economic impact and potential alternatives to the amendments in Section III, and the estimated compliance costs and burdens of the amendments under the PRA in Section IV above.

B. Legal Basis

The amendments contained in this release are being proposed under the authority set forth in Securities Act Sections 7 and 19(a) and Exchange Act Sections 3(b), 12, 13, 14, 15, and 23(a).

C. Small Entities Subject to the Proposed Rules

The proposed amendments would apply to registrants that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [173] For purposes of the Regulatory Flexibility Act, under our rules, a registrant, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[174] Under 17 CFR 270.0–10, an investment company, including a BDC, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[175] An investment company, including a BDC,[176] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[177] Commission staff estimates that, as of June 2021, there were 660 issuers,[178] and 9 BDCs [179] that may be considered small entities that would be subject to the proposed amendments.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the proposed amendments to be similar for large and small entities. Accordingly, we refer to the discussion of the proposed amendments' economic effects on all affected parties, including small entities, in Section III above. Consistent with that discussion, we anticipate that the economic benefits and costs likely could vary widely among small entities based on a number of factors, such as the nature and conduct of their businesses, which makes it difficult to project the economic impact on small entities with precision. As a general matter, however, we recognize that the costs of the proposed amendments borne by the affected entities could have a proportionally greater effect on small

[170] 5 U.S.C. 801 *et seq.*

[171] 5 U.S.C. 601 *et seq.*

[172] 5 U.S.C. 603(a).

[173] 5 U.S.C. 601(6).

[174] *See* 17 CFR 240.0–10(a).

[175] 17 CFR 270.0–10(a).

[176] BDCs are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[177] 17 CFR 270.0–10(a).

[178] This estimate is based on staff analysis of Form 10–K filings on EDGAR, or amendments thereto, filed during the calendar year of Jan. 1, 2020 to Dec. 31, 2020, or filed by Sept. 1, 2021, and on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

[179] These estimates are based on staff analysis of Morningstar data and data submitted by investment company registrants in forms filed on EDGAR as of June 30, 2021.

entities, as they may be less able to bear such costs relative to larger entities.

Compliance with the proposed amendments may require the use of professional skills, including legal skills. We request comment on how the proposed disclosure amendments would affect small entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has also proposed cybersecurity risk management rules and related rule amendments for advisers and funds, including BDCs. To the extent that the proposed rules and rule amendments in the Investment Management Cybersecurity Proposing Release are adopted, BDCs may be subject both to those proposed rules and rule amendments and to certain of the rules proposed in this rulemaking. To the extent that there could be overlap if these proposals are adopted, we would not expect the overlap to result in significant burdens for BDCs (including small BDCs) since they should be able to use their Form 8–K disclosure to more efficiently prepare the corresponding disclosure that would be required by the Investment Management Cybersecurity Proposing Release or, in the alternative, use that corresponding disclosure (if adopted) to prepare their Form 8–K disclosure.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Exempting small entities from all or part of the requirements;
- Using performance rather than design standards; and
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities.

The proposed amendments are intended to better inform investors about cybersecurity incidents and the cybersecurity risk management, strategy, and governance of registrants of all types and sizes which are subject to the Exchange Act reporting requirements. Under current requirements, the nature of registrants' cybersecurity disclosure varies widely, with registrants providing different levels of specificity regarding the cause, scope, impact and materiality of cybersecurity incidents. The timing of disclosure about material cybersecurity incidents also varies in the absence of a specific requirement regarding timely disclosure of such incidents. Further, while registrants generally discuss cybersecurity risks in the risk factor section of their annual reports, the disclosures are sometimes blended with other unrelated disclosures, which makes it more difficult for investors to locate, interpret, and analyze the information provided. The staff also has observed a divergence in these disclosures by industry and that smaller reporting companies generally provide less cybersecurity disclosure as compared to larger registrants.

Exempting small entities from the proposed amendments or establishing different compliance or reporting requirements for small entities could frustrate the goal of providing investors in these companies with more uniform and timely disclosure about material cybersecurity incidents and disclosure about their risk management and governance practices that is comparable to the disclosure provided by other registrants. Further, as stated in Sections II and III of this release, evidence suggests that smaller companies may have an equal or greater risk than larger companies of being attacked, making the proposed disclosures particularly important for investors in these companies.[180] Therefore, our objectives would not be served by establishing different compliance or reporting requirements for small entities or clarifying, consolidating or simplifying compliance and reporting requirements for small entities.

With respect to using performance rather than design standards, the proposed amendments use primarily use design rather than performance standards to promote more consistent and comparable disclosures by all registrants.

Section II of this release includes specific requests for comment on whether certain categories of registrants, including smaller reporting companies, should be exempted from the proposed Regulation S–K Item 106 disclosure regarding cybersecurity risk management, strategy and governance. The release also requests comment on how any exemption would impact investor assessments and comparisons of the cybersecurity risks of registrants. In addition, comment is solicited on whether smaller reporting companies should be exempted from the board expertise disclosure requirement in proposed Item 407(j) and from the requirements to present the proposed disclosure in Inline XBRL.

Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis;
- How the proposed amendments could further lower the burden on small entities; and
- How to quantify the impact of the proposed amendments.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 7 and 19(a) of the Securities Act and Sections 3(b), 12, 13, 14, 15, and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 232, 239, 240, and 249

Reporting and record keeping requirements, Securities.

For the reasons set forth in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

[180] *See supra* note 18. *See* Section III.E.3.

■ 2. Add § 229.106 to read as follows:

§ 229.106 (Item 106) Cybersecurity.

(a) *Definitions.* For purposes of this section:

Cybersecurity incident means an unauthorized occurrence on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

Cybersecurity threat means any potential occurrence that may result in, an unauthorized effort to adversely affect the confidentiality, integrity or availability of a registrant's information systems or any information residing therein.

Information systems means information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

(b) *Risk management and strategy.* Disclose in such detail as necessary to adequately describe the registrant's policies and procedures, if it has any, for the identification and management of risks from cybersecurity threats, including, but not limited to: Operational risk (*i.e.,* disruption of business operations); intellectual property theft; fraud; extortion; harm to employees or customers; violation of privacy laws and other litigation and legal risk; and reputational risk. Disclosure under this section should include, as applicable, a discussion of whether:

(1) The registrant has a cybersecurity risk assessment program, and if so, provide a description of such program;

(2) The registrant engages assessors, consultants, auditors, or other third parties in connection with any cybersecurity risk assessment program;

(3) The registrant has policies and procedures to oversee and identify the cybersecurity risks associated with its use of any third-party service provider, including, but not limited to, those providers that have access to the registrant's customer and employee data. If so, the registrant shall describe these policies and procedures, including whether and how cybersecurity considerations affect the selection and oversight of these providers and contractual and other mechanisms the company uses to mitigate cybersecurity risks related to these providers;

(4) The registrant undertakes activities to prevent, detect, and minimize effects of cybersecurity incidents, and if so, provide a description of the types of activities undertaken;

(5) The registrant has business continuity, contingency, and recovery plans in the event of a cybersecurity incident;

(6) Previous cybersecurity incidents informed changes in the registrant's governance, policies and procedures, or technologies;

(7) Cybersecurity-related risks and previous cybersecurity-related incidents have affected or are reasonably likely to affect the registrant's strategy, business model, results of operations, or financial condition and if so, how; and

(8) Cybersecurity risks are considered as part of the registrant's business strategy, financial planning, and capital allocation, and if so, how.

(c) *Governance.* (1) Describe the board's oversight of cybersecurity risk, including the following as applicable:

(i) Whether the entire board, specific board members, or a board committee is responsible for the oversight of cybersecurity risks;

(ii) The processes by which the board is informed about cybersecurity risks, and the frequency of its discussions on this topic; and

(iii) Whether and how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight.

(2) Describe management's role in assessing and managing cybersecurity-related risks, as well as its role in implementing the registrant's cybersecurity policies, procedures, and strategies. The description should include, but not be limited to, the following information:

(i) Whether certain management positions or committees are responsible for measuring and managing cybersecurity risk, specifically the prevention, mitigation, detection, and remediation of cybersecurity incidents, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;

(ii) Whether the registrant has a designated chief information security officer, or someone in a comparable position, and if so, to whom that individual reports within the registrant's organizational chart, and the relevant expertise of any such persons in such detail as necessary to fully describe the nature of the expertise;

(iii) The processes by which such persons or committees are informed about and monitor the prevention, mitigation, detection, and remediation of cybersecurity incidents; and

(iv) Whether and how frequently such persons or committees report to the board of directors or a committee of the board of directors on cybersecurity risk.

Instructions to Item 106(c): 1. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (c) of this section, the term board of directors means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (c) of this Item, the term board of directors means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

2. Relevant experience of management in Item 106(c)(2)(i) and (ii) may include, for example: Prior work experience in cybersecurity; any relevant degrees or certifications; any knowledge, skills, or other background in cybersecurity.

(d) *Updated incident disclosure.* (1) If the registrant has previously provided disclosure regarding one or more cybersecurity incidents pursuant to Item 1.05 of Form 8–K, the registrant must disclose any material changes, additions, or updates regarding such incident in the registrant's quarterly report filed with the Commission on Form 10–Q (17 CFR 249.308a) or annual report filed with the Commission on Form 10–K (17 CFR 249.310) for the period (the registrant's fourth fiscal quarter in the case of an annual report) in which the change, addition, or update occurred. The description should also include, as applicable, but not be limited to, the following information:

(i) Any material effect of the incident on the registrant's operations and financial condition;

(ii) Any potential material future impacts on the registrant's operations and financial condition;

(iii) Whether the registrant has remediated or is currently remediating the incident; and

(iv) Any changes in the registrant's policies and procedures as a result of the cybersecurity incident, and how the incident may have informed such changes.

(2) The registrant should provide the following disclosure to the extent known to management when a series of previously undisclosed individually immaterial cybersecurity incidents has become material in the aggregate:

(i) A general description of when the incidents were discovered and whether they are ongoing;

(ii) A brief description of the nature and scope of the incidents;

(iii) Whether any data was stolen or altered in connection with the incidents;

(iv) The effect of the incidents on the registrant's operations; and

(v) Whether the registrant has remediated or is currently remediating the incidents.

(e) *Structured Data Requirement.* Provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

■ 3. Amend § 229.407 by adding paragraph (j) to read as follows:

§ 229.407 (Item 407) Corporate Governance.

* * * * *

(j) *Cybersecurity expertise.* (1) If any member of the registrant's board of directors has expertise in cybersecurity, disclose the name(s) of any such director(s), and provide such detail as necessary to fully describe the nature of the expertise. In determining whether a director has expertise in cybersecurity, the registrant should consider, among other things:

(i) Whether the director has prior work experience in cybersecurity, including, for example, prior experience as an information security officer, security policy analyst, security auditor, security architect or engineer, security operations or incident response manager, or business continuity planner;

(ii) Whether the director has obtained a certification or degree in cybersecurity; and

(iii) Whether the director has knowledge, skills, or other background in cybersecurity, including, for example, in the areas of security policy and governance, risk management, security assessment, control evaluation, security architecture and engineering, security operations, incident handling, or business continuity planning.

(2) *Safe harbor.* (i) A person who is determined to have expertise in cybersecurity will not be deemed an expert for any purpose, including, without limitation, for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as a director with expertise in cybersecurity pursuant to this Item 407(j).

(ii) The designation or identification of a person as having expertise in cybersecurity pursuant to this Item 407(j) does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as having expertise in cybersecurity pursuant to this Item 407(j) does not affect the duties, obligations, or liability of any other member of the board of directors.

(3) *Structured Data Requirement.* Provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

* * * * *

Instruction to Item 407(j): In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (j) of this Item, the term board of directors means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (j) of this Item, the term board of directors means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

* * * * *

■ 4. Amend § 229.601 by revising (b)(101)(i)(C)(*1*) as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(101) * * *

(i) * * *

(C) * * *

(*1*) Only when:

(*i*) The Form 8–K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission and that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle. In such case, the Interactive Data File will be required only as to such revised financial statements regardless of whether the Form 8–K contains other financial statements; or

(*ii*) The Form 8–K includes disclosure required to be provided in an Interactive Data File pursuant to Item 1.05(b) of Form 8–K;

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

■ 6. Amend § 232.405 by adding paragraphs (b)(1)(iii) and (b)(4) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(1) * * *

(iii) The disclosure set forth in paragraph (4) of this section, as applicable.

* * * * *

(4) An Interactive Data File must consist of the disclosure provided under 17 CFR 229 (Regulation S–K) and related provisions that is required to be tagged, including, as applicable:

(i) The cybersecurity information required by:

(A) Item 106 of Regulation S–K (§ 229.106 of this chapter);

(B) Item 407(j) of Regulation S–K (§ 229.407(j) of this chapter);

(C) Item 1.05 of Form 8–K (§ 249.308 of this chapter); and

(D) Item 16J of Form 20–F (§ 249.220f of this chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m,78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

■ 8. Amend § 239.13 by revising paragraph (a)(3)(ii) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(3) * * *

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, 6.03 or 6.05 of Form 8–K (§ 249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) § 240.12b–25(b) of this chapter with respect to a report or a

portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that section; and

* * * * *

■ 9. Amend Form S–3 (referenced in § 239.13) by adding General Instruction I.A.3(b) to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–3

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. Registrant Requirements.

* * * * *

3. * * *

(a) * * *

(b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.04, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8–K (§ 249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

* * * * *

■ 10. Amend § 239.45 by revising paragraph (a)(2) to read as follows:

§ 239.45 Form SF–3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If § 240.12b–25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b–25(b) of this chapter. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of ''affiliate'' in § 230.405 of this chapter.

* * * * *

■ 11. Amend Form SF–3 (referenced in § 239.45) by revising General Instruction I.A(2) to read as follows:

Note: The text of Form SF–3 does not, and this addition will not, appear in the Code of Federal Regulations.

FORM SF–3

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–3

A.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78(l) or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of ''affiliate'' in Securities Act Rule 405 (17 CFR 230.405).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.15d–11 is also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 13. Amend § 240.13a–11 by revising paragraph (c) to read as follows:

§ 240. 13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

■ 14. Amend § 240.15d–11 by revising paragraph (c) to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 15. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

* * * * *

Section 249.308 is also issued under 15 U.S.C. 80a–29 and 80a–37.

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 16. Amend Form 20–F (referenced in § 249.220f) by adding Item 16J to read as follows:

Note: The text of Form 20–F does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

PART II

* * * * *

Item 16J. Cybersecurity

(a) Definitions. For purposes of this section:

(1) *Cybersecurity incident* means an unauthorized occurrence on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

(2) *Cybersecurity threat* means any potential occurrence that may result in, an unauthorized effort to adversely affect the confidentiality, integrity or availability of a registrant's information systems or any information residing therein.

(3) *Information systems* means information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

(b) *Risk management and strategy.*

(1) Disclose in such detail as necessary to adequately describe the registrant's policies and procedures, if it has any, for the identification and management of risks from cybersecurity threats, including, but not limited to: Operational risk (*i.e.,* disruption of business operations); intellectual property theft; fraud; extortion; harm to employees or customers; violation of privacy laws and other litigation and legal risk; and reputational risk. Disclosure under this section should include, as applicable, a discussion of whether:

(i) The registrant has a cybersecurity risk assessment program, and if so, provide a description of such program;

(ii) The registrant engages assessors, consultants, auditors, or other third parties in connection with any cybersecurity risk assessment program;

(iii) The registrant has policies and procedures to oversee and identify the cybersecurity risks associated with its use of any third-party service provider, including, but not limited to, those providers that have access to or have information about the registrant's customer and employee data. If so, the registrant shall describe these policies and procedures, including whether and how cybersecurity considerations affect the selection and oversight of these providers and contractual and other mechanisms the company uses to mitigate cybersecurity risks related to these providers;

(iv) The registrant undertakes activities to prevent, detect, and minimize effects of cybersecurity incidents, and if so, provide a description of the types of activities undertaken;

(v) The registrant has business continuity, contingency, and recovery plans in the event of a cybersecurity incident;

(vi) Previous cybersecurity incidents informed changes in the registrant's governance, policies and procedures, or technologies;

(vii) Cybersecurity related risks and previous cybersecurity related incidents have affected or are reasonably likely to affect the registrant's strategy, business model, results of operations, or financial condition and if so, how; and

(viii) Cybersecurity risks are considered as part of the registrant's business strategy, financial planning, and capital allocation, and if so, how.

(c) *Governance.*

(1) Describe the board's oversight of cybersecurity risk, including the following as applicable:

(i) Whether the entire board, specific board members, or a board committee is responsible for the oversight of cybersecurity risks;

(ii) The processes by which the board is informed about cybersecurity risks, and the frequency of its discussions on this topic; and

(iii) Whether and how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight.

(2) Describe management's role in assessing and managing cybersecurity related risks, as well as its role in implementing the registrant's cybersecurity policies, procedures, and strategies. The description should include, but not be limited to, the following information:

(i) Whether certain management positions or committees are responsible for measuring and managing cybersecurity risk, specifically the prevention, mitigation, detection, and remediation of cybersecurity incidents, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;

(ii) Whether the registrant has a designated chief information security officer, or someone in a comparable position, and if so, to whom that individual reports within the registrant's organizational chart, and the relevant expertise of any such person in such detail as necessary to fully describe the nature of the expertise;

(iii) The processes by which such persons or committees are informed about and monitor the prevention, mitigation, detection, and remediation of cybersecurity incidents; and

(iv) Whether and how frequently such persons or committees report to the board of directors or a committee of the board of directors on cybersecurity risk.

Instructions to Item 16J(c)

1. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (c) of this Item, the term board of directors means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (c) of this Item, the term board of directors means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

2. Relevant experience of management in Item 16J(c)(2)(i) and (ii) may include, for example: Prior work experience in cybersecurity; any relevant degrees or certifications; any knowledge, skills, or other background in cybersecurity.

(d) *Updated incident disclosure.*

(1) If the registrant has previously provided disclosure regarding one or more cybersecurity incidents pursuant to Form 6–K, the registrant must disclose any material changes, additions, or updates regarding such incident that occurred during the reporting period. The description should also include, as applicable, but not limited to, the following information:

(i) Any material effect of the incident on the registrant's operations and financial condition;

(ii) Any potential material future impacts on the registrant's operations and financial condition;

(iii) Whether the registrant has remediated or is currently remediating the incident; and

(iv) Any changes in the registrant's policies and procedures as a result of the cybersecurity incident, and how the incident may have informed such changes.

(2) The registrant should provide the following disclosure to the extent known to management regarding any previously undisclosed material cybersecurity incidents that have occurred during the reporting period, including a series of individually immaterial cybersecurity incidents that have become material in the aggregate:

(i) A general description of when the incidents were discovered and whether they are ongoing;

(ii) A brief description of the nature and scope of the incidents;

(iii) Whether any data was stolen or altered in connection with the incidents;

(iv) The effect of the incidents on the registrant's operations; and

(v) Whether the registrant has remediated or is currently remediating the incidents.

(e) *Cybersecurity expertise.*

(1) If any member of the registrant's board of directors has expertise in cybersecurity, disclose the name(s) of any such director(s), and provide such detail as necessary to fully describe the nature of the expertise. In determining whether a director has expertise in cybersecurity, the registrant should consider, among other things:

(i) Whether the director has prior work experience in cybersecurity, including, for example, prior experience as an information security officer, security policy analyst, security auditor, security architect or engineer, security operations or incident response manager, or business continuity planner;

(ii) Whether the director has obtained a certification or degree in cybersecurity; and

(iii) Whether the director has knowledge, skills, or other background in cybersecurity, including, for example, in the areas of security policy and governance, risk management, security assessment, control evaluation, security architecture and engineering, security operations, incident handling, or business continuity planning.

(2) *Safe harbor.*

(i) A person who is determined to have expertise in cybersecurity will not be deemed an expert for any purpose, including, without limitation, for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as a director with expertise in cybersecurity pursuant to this Item 16J.

(ii) The designation or identification of a person as having expertise in cybersecurity pursuant to this Item 16J does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as having expertise in cybersecurity pursuant to this Item 16J does not affect the duties, obligations or liability of any other member of the board of directors.

(f) *Structured Data Requirement.* Provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

Instruction to Item 16J. Item 16J applies only to annual reports, and does not apply to registration statements on Form 20–F.

* * * * *

■ 17. Amend Form 6–K (referenced in § 249.306) by adding the phrase ''cybersecurity incident'' before the phrase ''and any other information which the registrant deems of material importance to security holders.'' in the second paragraph of General Instruction B.

■ 18. Amend Form 8–K (referenced in § 249.308) by:

■ a. Revising General Instruction B.1.; and

■ b. Adding Item 1.05.

The revision and addition read as follows:

Note: The text of Form 8–K does not, and this addition will not, appear in the Code of Federal Regulations.

FORM 8–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

Instruction B. Events To Be Reported and Time for Filing of Reports

1. A report on this form is required to be filed or furnished, as applicable, upon the occurrence of any one or more of the events specified in the items in Sections 1 through 6 and 9 of this form. Unless otherwise specified, a report is to be filed or furnished within four business days after occurrence of the event. If the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the four business day period shall begin to run on, and include, the first business day thereafter. A registrant either furnishing a report on this form under Item 7.01 (Regulation FD Disclosure) or electing to file a report on this form under Item 8.01 (Other Events) solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing, as applicable, in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)), including the deadline for furnishing or filing such report. A report pursuant to Item 5.08 is to be filed within four business days after the registrant determines the anticipated meeting date. A report pursuant to Item 1.05 is to be filed within four business days after the registrant determines that it has experienced a material cybersecurity incident.

* * * * *

Item 1.05 Cybersecurity Incidents

(a) If the registrant experiences a cybersecurity incident that is determined by the registrant to be material, disclose the following information to the extent known to the registrant at the time of filing:

(1) When the incident was discovered and whether it is ongoing;

(2) A brief description of the nature and scope of the incident;

(3) Whether any data was stolen, altered, accessed, or used for any other unauthorized purpose;

(4) The effect of the incident on the registrant's operations; and

(5) Whether the registrant has remediated or is currently remediating the incident.

(b) A registrant shall provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

Instructions to Item 1.05

1. A registrant shall make a materiality determination regarding a cybersecurity incident as soon as reasonably practicable after discovery of the incident.

2. Disclosure of any material changes or updates to information disclosed pursuant to this Item 1.05 is required pursuant to § 229.106(d) [Item 106(d) of Regulation S–K] in the registrant's quarterly report filed with the Commission on Form 10–Q (17 CFR 249.308a) or annual report filed with the Commission on Form 10–K (17 CFR 249.310) for the period (the registrant's fourth fiscal quarter in the case of an annual report) in which the change, addition, or update occurred.

3. The definition of the term ''cybersecurity incident'' in § 229.106(a) [Item 106(a) of Regulation S–K] shall apply to this Item.

* * * * *

■ 19. Amend Form 10–Q (referenced in § 249.308(a) by:

■ a. Redesignating Item 5(b) as Item 5(c); and

■ b. Adding new Item 5(b) to read as follows:

Note: The text of Form 10–Q does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 10–Q

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 5. Other Information

* * * * *

(b) Furnish the information required by Item 106(d) of Regulation S–K (§ 229.106(d) of this chapter).

* * * * *

■ 20. Amend Form 10–K (referenced in § 249.310) by:

■ a. Adding Item 1.C to Part I; and

■ b. Revising Item 10 in Part III.

The addition and revision read as follows:

Note: The text of Form 10–K does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 10–K

* * * * *

PART I

* * * * *

Item 1.C. Cybersecurity

(a) Furnish the information required by Item 106 of Regulation S–K (§ 229.106 of this chapter).

(b) An asset-backed issuer as defined in Item 1101 of Regulation AB (§ 229.1101 of this chapter) that does not have any executive officers or directors may omit the information required by Item 106(c) of Regulation S–K (§ 229.106(c) of this chapter).

* * * * *

Item 10. Directors, Executive Officers and Corporate Governance. Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4), (d)(5), and (j) of Regulation S–K (§§ 229.401, 229.405, 229.406, and 229.407(c)(3), (d)(4), (d)(5), and (j) of this chapter).

* * * * *

By the Commission.

Dated: March 9, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–05480 Filed 3–22–22; 8:45 am]

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